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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF ENERGY

10 CFR Part 800

[DOE-HQ-2025-0014]

RIN 1903-AA23

Rescinding Regulations for Loans for Minority Business Enterprises Seeking DOE Contracts and Assistance

AGENCY: Office of Civil Rights and EEO, Department of Energy.

ACTION: Direct final rule; further delay of effective date.

SUMMARY: The U.S. Department of Energy (DOE) is further extending the effective date of the direct final rule “Rescinding Regulations for Loans for Minority Business Enterprises Seeking DOE Contracts and Assistance,” published on May 16, 2025.

DATES: As of June 3, 2026, the effective date of the direct final rule published May 16, 2025, at 90 FR 20769, delayed until September 12, 2025 (90 FR 31137), further delayed until December 9, 2025 (90 FR 43539), again delayed until March 9, 2026 (90 FR 56967) and then until June 4, 2026 (91 FR 10954) is further delayed until September 1, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Novak, U.S. Department of Energy, Office of the General Counsel, GC-1, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586-5281 or DOEGeneralCounsel@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On May 16, 2025, DOE published a direct final rule. 90 FR 20769. DOE stated in that direct final rule that if significant adverse comments were received by June 16, 2025, DOE would withdraw the direct final rule. *Id.* On July 14, 2025, DOE published a document delaying the effective date to consider comments submitted in response to the direct final rule. 90 FR 31137.

In this document, DOE is further extending the effective date pending Department of Justice action on the topic of the direct final rule under

Executive Order 14281, “Restoring Equality of Opportunity and Meritocracy” and Executive Order 12250, “Leadership and Coordination of Nondiscrimination Laws.” 90 FR 17537 (April 28, 2025); 45 FR 72995 (Nov. 4, 1980).

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A) and for which no notice or hearing is required by statute. Additionally, this action is not a “substantive rule” for which a 30-day delay in effective date is required under 5 U.S.C. 553(d).

Signing Authority

This document of the Department of Energy was signed on May 29, 2026, by Chris Wright, 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 June 1, 2026.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2026-11057 Filed 6-2-26; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064-AF76

Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Correcting amendments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is correcting a final rule that was

published in the **Federal Register** on January 22, 2021.

DATES: Effective on June 3, 2026.

FOR FURTHER INFORMATION CONTACT:

Justin Hagerty, Senior Examination Specialist, Division of Risk Management Supervision, (319) 382-2760, JHagerty@fdic.gov; Shane Bogusz, Senior Attorney, Legal Division, (366) 571-0212, SBogusz@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This **Federal Register** Notice corrects technical errors in the FDIC’s regulations concerning brokered deposits, 12 CFR parts 303 and 337, which were amended by a final rule published in the **Federal Register** on January 22, 2021 (2021 rule). The 2021 rule inadvertently deleted the text accompanying two footnotes (which, additionally, were previously misnumbered) in 12 CFR 337.6(a)(3)(i). The 2021 rule also failed to update a cross-reference to 12 CFR 337.6(b)(2)(ii), a section which was relocated to 12 CFR 337.7(c)(2). Finally, the 2021 rule inadvertently used the term “assets under management” in the regulatory text for Part 303 when the rule’s preamble, as well as two related provisions of the FDIC’s regulations, used the correct terminology, “assets under administration,” to describe the same concept. Through this document, the FDIC is correcting these inadvertent errors, as well as making several minor grammatical changes.

II. Administrative Law Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”¹ The technical amendments do not impose any new substantive regulatory requirements on any party. The technical amendments make minor revisions to promote clarity and consistency, as well as correct certain drafting errors contained in the 2021 brokered deposit rule. For these reasons, there is good cause for the FDIC to find that it is unnecessary to publish

¹ 5 U.S.C. 553(b)(3)(B).

notice of these amendments in the **Federal Register** or to solicit public comment thereon.

Although the APA generally requires publication of a rule at least 30 days before its effective date, for similar reasons there is good cause for the amendments to take effect on June 3, 2026. Additionally, the provisions of the Regulatory Flexibility Act,² which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.³

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

Authority and Issuance

For the reasons stated in the preamble, the FDIC corrects 12 CFR parts 303 and 337 by making the following correcting amendments:

PART 303—FILING PROCEDURES

- 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1829, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415, and 15 U.S.C. 1601–1607.

§ 303.243 [Amended]

- 2. Amend § 303.243 by:
 - a. Removing the text “well-capitalized” in each place it appears and adding in its place the text “well capitalized”;
 - b. In paragraph (a)(1):
 - i. Adding a comma after the word “renew” in each place that it appears; and
 - ii. Removing the word “federal” and adding in its place the word “Federal”.
 - c. In paragraph (a)(3)(iii):
 - i. Adding a comma after the word “rates”; and
 - ii. Adding a comma after the word “solicitation”.
 - d. In paragraph (a)(3)(vi):
 - i. Adding a comma after the word “acceptance”.

- e. In paragraph (b)(4)(ii)(D):
 - i. Removing the word “management” and adding in its place the word “administration”.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

- 3. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463, 1464, 1468, 1816, 1818(a), 1818(b), 1819, 1820(d), 1821(f), 1828(j)(2), 1831, 1831f, 1831g, 5412.

- 4. Amend § 337.6 by:
 - a. Removing the text “appropriate federal banking” in each place it appears and adding in its place the text “appropriate Federal banking”;
 - b. Removing the text “well-capitalized” in each place it appears and adding in its place the text “well capitalized”;
 - c. In each place it appears, adding a comma following the word “renew”;
 - d. In each place it appears, adding a comma following the word “renewal”;
 - e. Revising paragraph (a)(3)(i);
 - f. Removing the editorial note appearing after (a)(3)(i);
 - g. Revising paragraph (a)(5)(iii)(C)(1);
 - h. In paragraph (a)(5)(v)(I)(1)(xiii), removing the text “and” and in its place adding the text “or”; and
 - i. In paragraph (d), removing the text “paragraph (b)(2)(ii) of the section” and in its place adding the text “§ 337.7(c)(2)”.

The revisions read as follows:

§ 337.6 Brokered deposits.

- (a) * * *
 - (3) * * *
 - (i) For purposes of section 29 of the Federal Deposit Insurance Act, this section, and § 337.7, the terms well capitalized, adequately capitalized, and undercapitalized,¹ shall have the same meaning as to each insured depository institution as provided under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate Federal banking agency for that institution.²
- [FN1] The term undercapitalized includes any institution that is significantly undercapitalized or critically undercapitalized under regulations implementing section 38 of the Federal Deposit Insurance Act and issued by the appropriate Federal banking agency for that institution.

[FN2] For the most part, the capital measure terms are defined in the following regulations: FDIC—12 CFR part 324, subpart H; Board of Governors of the Federal Reserve System—12 CFR part 208; and Office of the Comptroller of the Currency—12 CFR part 6.

* * * * *

- (5) * * *
- (iii) * * *
- (C) * * *

(1) A person is engaged in matchmaking activities if the person proposes deposit allocations at, or between, more than one insured depository institution based upon both the particular deposit objectives of a specific depositor or depositor's agent, and the particular deposit objectives of specific insured depository institutions, except in the case of deposits placed by a depositor's agent with an insured depository institution affiliated with the depositor's agent. A proposed deposit allocation is based on the particular objectives of:

(i) A depositor or depositor's agent when the person has access to specific financial information of the depositor or depositor's agent and the proposed deposit allocation is based upon such information; and

(ii) An insured depository institution when the person has access to the target deposit-balance objectives of specific insured depository institutions and the proposed deposit allocation is based upon such information.

* * * * *

- 5. Amend § 337.7 by:

- a. In paragraph (b)(2), removing the comma that follows the word “monthly”; and
- b. Revising paragraph (c)(1) to read as follows:

§ 337.7 Interest rate restrictions.

- (c) * * *

(1) *Well capitalized institutions.* A well capitalized institution may pay interest without restriction by this section.

Federal Deposit Insurance Corporation

Dated at Washington, DC on May 29, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026–11044 Filed 6–2–26; 8:45 am]

BILLING CODE 6714–01–P

² 5 U.S.C. 601 *et seq.*

³ 44 U.S.C. 3501 *et seq.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

[Docket No. FDA–2025–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Change of Sponsor; Change of Sponsor Address; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment; correcting amendment.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the final rule that published in the **Federal Register** of April 16, 2026. That final rule updated regulations to reflect application-related actions for new animal drug applications and abbreviated new animal drug applications during October, November, and December of 2025. The final rule published with some inadvertent errors in the instructions for technical amendments. This document corrects those errors.

DATES: This rule is effective June 3, 2026.

FOR FURTHER INFORMATION CONTACT: James Delaney, Center for Veterinary Medicine, Food and Drug Administration, 5001 Campus Drive, College Park, MD 20740, 240–402–5677, james.delaney@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 16, 2026 (91 FR 20337), FDA published the final rule “New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Change of Sponsor; Change of Sponsor Address” with errors. On page 20340, amendatory language in instruction 9 for § 520.1263b Lincomycin hydrochloride soluble powder, did not properly provide instructions to revise paragraphs (d)(1), (d)(2) heading, (d)(2)(i), (d)(2)(iii), and (d)(3). On page 20343, amendatory language in instruction 30 for § 558.305 Laidlomycin propionate potassium, did not properly provide instructions to revise paragraphs (d)(1) introductory text, (d)(2), (d)(3) introductory text, and (e) introductory text including table headings. On page 20346, amendatory language in instruction 33 for § 558.500 Ractopamine, did not include instructions to revise paragraph (d)(2)

introductory text. This document corrects these errors.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Accordingly, 21 CFR parts 520 and 558 are corrected by making the following correcting amendments:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.1263b, revise paragraphs (d)(1), (d)(2) heading, (d)(2)(i) and (iii), and (d)(3)(i) and (ii) to read as follows:

§ 520.1263b Lincomycin hydrochloride soluble powder.

* * * * *

(d) * * *

(1) *Swine*—(i) *Amount*. Administer at a dose rate of 250 milligrams (mg) of lincomycin per gallon of drinking water. In clinical studies, this dose rate provided an average of 3.8 mg of lincomycin per pound of body weight per day. The drug should be administered for a minimum of 5 consecutive days beyond the disappearance of symptoms (bloody stools) up to a maximum of 10 consecutive days. If water treatment is discontinued prior to this time, a lincomycin treatment program may be continued with lincomycin Type A medicated article at 100 grams lincomycin per ton of complete feed as the sole ration according to label directions. A dose of 3.8 mg lincomycin per pound of body weight may be maintained by medicating the drinking water at a concentration of 250 mg per gallon of drinking water when pigs are consuming 1.5 gallons per 100 lb of body weight per day. Under these circumstances the concentration of lincomycin required in medicated water may be adjusted to compensate for variations in age and weight of animals, the nature and severity of disease symptoms, environmental temperature and humidity, each of which affects water consumption. For use in automatic water proportioner to deliver 1 ounce of stock solution per gallon of drinking water. After a treatment program is discontinued, a control program for swine dysentery may be followed by feeding lincomycin Type A medicated article at 40 grams

lincomycin per ton of complete feed as the sole ration.

(ii) *Indications for use*. For the treatment of swine dysentery (bloody scours) in swine. Not for use in pregnant swine or swine intended for breeding.

(iii) *Limitations*. Discard medicated drinking water if not used within 2 days. Fresh stock should be prepared daily. Do not use the water treatment and the feed treatment simultaneously. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to water containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. If clinical signs of bloody scours (watery, mucoid, or bloody stools) have not improved during the first 6 days of medication, discontinue treatment and redetermine the diagnosis. On rare occasions, some pigs may show reddening of the skin, swelling of the anus, and irritable behavior. These conditions have been self-correcting within five to seven days without discontinuing the lincomycin treatment. The safety of lincomycin has not been demonstrated for pregnant swine or swine intended for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Broiler chickens*—(i) *Amount*. Administer at a dose rate of 64 mg of lincomycin per gallon of drinking water. Start medication as soon as the diagnosis of necrotic enteritis is determined. The drug should be administered for 7 consecutive days. After water medication is discontinued, a control program for necrotic enteritis may be followed by feeding lincomycin Type A medicated article at 2 grams lincomycin per ton of complete feed.

* * * * *

(iii) *Limitations*. Not for use in laying hens or breeder chickens. Discard medicated drinking water if not used within 2 days. Fresh stock should be prepared daily. Do not use the water treatment and the feed treatment simultaneously. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to water containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) * * *

(i) *Amount*. Administer 100 mg lincomycin per hive once weekly for 3 weeks. Mix 250 mg LINCOMIX Soluble Powder (100 mg lincomycin) with 20 g confectioners’/powder sugar and dust over the top bars of the brood chamber.

(ii) *Indications for use.* For the control of American foulbrood (*Paenibacillus larvae*) in honey bees.
* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

- 3. The authority citation for part 558 continues to read as follows:
- Authority:** 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.
- 4. In § 558.305, revise paragraphs (d)(1) introductory text, (d)(2), (d)(3) introductory text, (e) introductory text,

and the column headings for the table in paragraph (e) to read as follows:

§ 558.305 Laidlomycin propionate potassium.
* * * * *

(d) * * *

(1) Laidlomycin propionate potassium Type B liquid medicated feeds may be manufactured from dry laidlomycin propionate potassium Type A medicated articles. The Type B liquid medicated feeds must have a pH of 6.0 to 8.0, dry matter of 62 to 75 percent, and bear appropriate mixing directions as follows:
* * * * *

(2) The expiration date of the Type B liquid medicated feed is 21 days after date of manufacture. The expiration date for the dry Type C medicated feed made from the Type B liquid medicated feed is 7 days after date of manufacture.

(3) Labeling for all Type B medicated feeds (liquid and dry) and Type C medicated feeds containing laidlomycin propionate potassium shall bear the following statements:
* * * * *

(e) *Conditions of use.* It is used in growing beef steers and heifers fed in confinement for slaughter as follows:

Laidlomycin propionate potassium in grams per ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*

- * * * * *
- 5. In § 558.500, revise paragraph (d)(2) introductory text to read as follows:

§ 558.500 Ractopamine.
* * * * *

(d) * * *

(2) Labeling of Type A medicated articles and Type B and Type C medicated feeds intended for swine shall bear the following:
* * * * *

Grace R. Graham,
Deputy Commissioner for Policy, Legislation, and International Affairs.
[FR Doc. 2026–11104 Filed 6–2–26; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2026–0371]

Special Local Regulations; Marine Events Within Southwest District—Great Western Tube Float

AGENCY: Coast Guard, DHS.
ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Great Western Tube Float on June 13, 2026, to provide for the safety of the participants, crew, sponsor vessels, and general users on the navigable waterways during this event. Our regulation for marine events within Southwest District identifies the

regulated area for this event in Parker, AZ. During the enforcement period, persons and vessels are prohibited from entering, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102 will be enforced from 7 a.m. until 5 p.m., on June 13, 2026, for the location described in Item No. 9 in Table 1 to § 100.1102.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Shelley Delgado, Waterways Management, U.S. Coast Guard Sector San Diego, CA; email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1102 for the Great Western Tube Float in Parker, AZ for the location described in Table No. 1 to § 100.1102, Item No. 9 of that section, from 7 a.m. to 5 p.m. on June 13, 2026. This action is being taken to provide for the safety of life on the navigable waterway during the float. Our regulation for recurring marine events within Southwest District on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona), § 100.1102, Table 1 to § 100.1102, Item No. 9, specifies the location of the regulated area for the Great Western Tube Float, which encompasses portions of the Colorado River. Under the provisions of § 100.1102, persons and vessels are prohibited from entering, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated

representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

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

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

R.C. Tucker
Captain, U.S. Coast Guard, Captain of the Port San Diego.
[FR Doc. 2026–11049 Filed 6–2–26; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2026–0489]

Special Local Regulations; Marine Events Within the Southeast Coast Guard District

AGENCY: Coast Guard, DHS.
ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations Cruce a Nado Internacional Swim event on September 6, 2026, to provide for the safety of life on the navigable waters between Cardona Island and Ponce Bay, Puerto Rico (PR) during this event. Our regulation for marine events within the Southeast Coast Guard District identifies the regulated area for this event in Ponce, PR. During the enforcement periods, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign. No person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port San Juan or a designated representative.

DATES: The regulations in 33 CFR 100.701 will be enforced for the swim Cruce a Nado Internacional regulated area listed in Paragraph (a), Item No. 7, in Table 1 to § 100.701, from 12 p.m. until 4 p.m., on September 6, 2026.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LCDR Rachel E. Thomas, Sector San Juan Waterways Management Division, U.S. Coast Guard; telephone 571-613-1417, or email Rachel.E.Thomas@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.701 for the Cruce a Nado Internacional swim event regulated area identified in Paragraph (a), Item No. 7, in Table 1 to § 100.701, from 12 p.m. through 4 p.m. on September 6, 2026. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Southeast Coast Guard District Paragraph (a), Item No. 7, in Table 1 to § 100.701, specifies the location of the regulated area for the Cruce a Nado Internacional Swim event. Under the provisions of § 100.701(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Luis J. Rodríguez,
Captain, U.S. Coast Guard, Captain of the Port Sector San Juan.

[FR Doc. 2026-11048 Filed 6-2-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2026-0632]

RIN 1625-AA09

Drawbridge Operation Regulation; Passaic River, Harrison, NJ

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the Route 280 Bridge at mile 5.8 across the Passaic River, Harrison, New Jersey. On April 29, 2026, the U.S. Coast Guard issued a permit which authorized the conversion of the Route 280 Bridge from a moveable bridge to a fixed bridge. The operating regulation for the bridge is no longer applicable or necessary and will be removed from the Code of Federal Regulations.

DATES: This rule is effective June 3, 2026.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2026-0632) in the "SEARCH" box and click "SEARCH". In the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Donna D. Leoce, Bridge Management Specialist, Northeast Coast Guard District, telephone (571) 613-2415, email: Donna.D.Leoce@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this final rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this

rule because the Route 280 Bridge, mile 5.8 across the Passaic River, Harrison, NJ meets the needs of navigation on the Passaic River in the closed position and permitted it as a fixed bridge on April 29, 2026. Therefore, the regulation under 33 CFR 117.739(g) is no longer necessary or applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes restrictions that have no further use or value. This rule will not have any effect on the waterway users or land users of the bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The modification of the bridge from a moveable to fixed bridge was authorized by the U.S. Coast Guard on April 29, 2026, and modifications are currently taking place. The removal of the regulation regarding an inapplicable operating schedule therefore will have no effect on mariners currently operating on this waterway. This rule merely requires an administrative change to the **Federal Register**, to omit a regulatory requirement that is no longer applicable or necessary. Therefore, a delayed effective date is unnecessary and impracticable.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The purpose of this rule is to remove the section of 33 CFR 117.739(g) that refers to the Route 280 Bridge at mile 5.8 across the Passaic River, Harrison, New Jersey, from the Code of Federal Regulations since it governs a bridge that will no longer abide by an operating schedule.

IV. Discussion of Final Rule

The Coast Guard is removing the regulation in 33 CFR 117.739(g) related to the draw operations for this bridge because it is no longer a drawbridge that opens. The change removes the section of the regulation governing the Route 280 Bridge since the bridge has been permitted as a fixed bridge that will remain in a closed position. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the Route 280 Bridge, which no longer will be a drawbridge. This regulatory change does not affect waterway or land traffic as the permit regarding the conversion to a fixed bridge has already been approved.

V. Regulatory Analyses

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

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

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

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

B. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Federalism and Indian Tribal Government

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

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

responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

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

E. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.4.

§ 117.739 [Amended]

■ 2. Amend § 117.739 as follows:

- a. Remove paragraph (g); and
- b. Redesignate paragraphs (h) through (l) as paragraphs (g) through (k), respectively.

M.E. Platt,

Rear Admiral, U.S. Coast Guard, Commander, Northeast Coast Guard District.

[FR Doc. 2026–11061 Filed 6–2–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–0618]

RIN 1625–AA00

Safety Zone; Wisconsin River, Wausau, WI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Wisconsin River in Wausau, WI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with an air show. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Lake Michigan, or their designated representative.

DATES: This rule is effective from June 25, 2026, through June 27, 2026. It will be subject to enforcement at the following times: from 2 p.m. through 4 p.m. on June 25, 2026; from 4:30 p.m. through 10 p.m. on June 26, 2026; and from 3:30 p.m. through 10 p.m. on June 27, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–0618.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact Lieutenant Commander Jessica Anderson, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7182, or email D09-SMB-SECLAKEMICHIGAN-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background and Authority

The Coast Guard received notification that an air show will be occurring on the Wisconsin River in Wausau, WI. The Captain of the Port (COTP) Lake Michigan has determined that potential hazards associated with the air show are a safety concern for those in the immediate vicinity.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by June 25, 2026, to protect personnel, vessels, and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

For the same reason, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes a safety zone from June 25, 2026 through June 27, 2026. It will be subject to enforcement from 2 p.m. through 4 p.m. on June 25, 2026; from 4:30 p.m. through 10 p.m. on June 26, 2026; and from 3:30 p.m. through 10 p.m. on June 27, 2026. The safety zone will cover all navigable waters of the Wisconsin River bounded by an area that is enclosed within the following points: Point 1 at 44°55.573' N, 089°38.043' W; thence to Point 2 at 44°55.465' N, 089°38.215' W; thence to Point 3 at 44°55.177' N, 089°37.989' W; thence to Point 4 at 44°54.631' N, 089°37.480' W; thence to Point 5 at 44°54.869' N, 089°35.864' W; thence to Point 6 at 44°55.122' N, 089°37.115' W; thence returning to Point 1. Vessels and persons will not be allowed to enter the zone during this time, unless authorized by the Captain of the Port.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

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

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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

D. Unfunded Mandates Reform Act

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

E. Environment

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

This rule is a safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A

Record of Environmental Consideration supporting this determination is available in the docket.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09.0618 to read as follows:

§ 165.T09–0618 Safety Zone; Wisconsin River, Wausau, WI.

(a) *Location.* The following area is a safety zone: all navigable waters of the Wisconsin River, from surface to bottom, bounded by an area that is enclosed within the following points: starting at 44°55.573' N, 089°38.043' W; thence to 44°55.465' N, 089°38.215' W; thence to 44°55.177' N, 089°37.989' W; thence to 44°54.631' N, 089°37.480' W; thence to 44°54.869' N, 089°35.864' W; thence to 44°55.122' N, 089°37.115' W; thence returning to the point of origin. These coordinates are based on the North American Datum 83 (NAD 83).

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (414) 747–7182. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 2 p.m. through 4 p.m. on June 25, 2026; from 4:30 p.m. through 10 p.m. on June 26, 2026; and

from 3:30 p.m. through 10 p.m. on June 27, 2026.

Rhianna N. Macon,
Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2026–11066 Filed 6–2–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2026–0678]

Safety Zone; Fireworks Displays Within the USCG East District (Formerly Fifth Coast Guard District); The Wharf, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display at “The Wharf D.C.,” in Washington, DC, to provide for the safety of life on navigable waterways during this event. Our regulation for recurring safety zones for fireworks displays within the USCG East District identifies the precise location. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) from 9 p.m. until 10 p.m., on June 22, 2026.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Natasha M. Hand, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard; telephone 410–576–2596, email MDNCRMarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for a fireworks display at The Wharf D.C. from 9 p.m. until 10 p.m., on June 22, 2026. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring safety zones for fireworks displays within the USCG East District, 33 CFR 165.506, specifies the location of the safety zone for the fireworks show, which encompasses

portions of the Washington Channel in the Upper Potomac River, in line 1 of Table 2 to Paragraph (h)(2). As reflected in 33 CFR 165.23, vessels in the vicinity of the safety zone may not enter, remain in, or transit through the safety zone during the enforcement period unless authorized to do so by the COTP or his representative, and they must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: June 1, 2026.

Patrick C. Burkett,
Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2026–11097 Filed 6–2–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–0617]

RIN 1625–AA00

Safety Zone; Lake Michigan, Manistee, MI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Lake Michigan near Manistee, MI. This action is intended to protect personnel, vessels, and the marine environment from potential hazards created by a drone display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Lake Michigan, or their designated representative.

DATES: This rule is effective from 10 p.m. through 11:30 p.m. on June 20, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–0617.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact Lieutenant Commander Jessica Anderson, Sector Lake Michigan Waterways Management Division, U.S.

Coast Guard; telephone 414–747–7182, or email: D09-SMB-SECLAKEMICHIGAN-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard received notification that a drone display will be launched from First Street Beach on Lake Michigan near Manistee, MI. The Captain of the Port (COTP) Lake Michigan has determined that potential hazards associated with the drone display are a safety concern for anyone within near proximity of the display.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by June 20, 2026, to protect personnel, vessels, and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

For the same reason, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. to 11:30 p.m. on June 20, 2026. The safety zone will cover all navigable waters of Lake Michigan within the following points: Point 1 at 44°14.890′ N, 086°20.943′ W; thence to Point 2 at 44°15.0633′ N, 086°21.0267′ W; thence to Point 3 at 44°14.9617′ N, 086°20.5267′ W; thence to Point 4 at 44°14.930′ N, 086°20.527′ W; thence returning to Point 1. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled drone display. Vessels and persons will not be allowed to enter the zone during this time, unless authorized by the Captain of the Port.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses

based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

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

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

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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

D. Unfunded Mandates Reform Act

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

E. Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T09–0617 to read as follows:

§ 165.T09–0617 Safety Zone; Lake Michigan, Manistee, MI.

(a) *Location.* The following area is a safety zone: All navigable waters of Lake Michigan, in an area that is enclosed by a line connecting the following points: starting at 44°14.890' N, 086°20.943' W; thence to 44°15.0633' N, 086°21.0267' W; thence to 44°14.9617' N, 086°20.5267' W; thence to 44°14.930' N, 086°20.527' W; thence returning to the point of origin. These coordinates are based on the North American Datum 83 (NAD 83).

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (414) 747–7182. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 10 p.m. to 11:30 p.m. on June 20, 2026.

Rhianna N. Macon,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2026–11067 Filed 6–2–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2026–0677]

Safety Zone; Fireworks Displays Within the USCG East District (Formerly Fifth Coast Guard District); The City of Alexandria, VA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display launched from a barge on the Upper Potomac River, at Washington, DC to provide for the safety of life on the navigable waterways. Our regulation for recurring safety zones for fireworks displays within the USCG East District identifies the precise location. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized by the COTP or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 3 of table 2 to 33 CFR 165.506(h)(2) from 8:30 p.m. until 9:30 p.m., on June 13, 2026.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Natasha M. Hand, Sector Maryland-NCR, Waterways Management

Division, U.S. Coast Guard: telephone 410-576-2596, email MDNCRMarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for a fireworks display on the Upper Potomac River, at Washington, DC from 8:30 p.m. until 9:30 p.m., on June 13, 2026. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring safety zones for fireworks displays within the USCG East District, 33 CFR 165.506, specifies the location of the safety zone for the fireworks show, which encompasses portions of the Washington Channel in the Upper Potomac River, in line no. 3 of Table 2 to Paragraph (h)(2). As reflected in 33 CFR 165.23, vessels in the vicinity of the safety zone may not enter, remain in, or transit through the safety zone during the enforcement period unless authorized to do so by the COTP or his representative, and they must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: June 1, 2026.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2026-11096 Filed 6-2-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2025-0039]

RIN 2127-AM90

Federal Motor Vehicle Safety Standards No. 216; Roof Crush Resistance, Federal Motor Vehicle Safety Standard No. 216a; Roof Crush Resistance; Upgraded Standard

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) to remove the obsolete Federal Motor Vehicle Safety

Standard (FMVSS) No. 216, related to roof crush resistance. The agency received one comment, but the comment is not within the scope of the proposed rule. Therefore, the agency is removing the obsolete FMVSS No. 216 as proposed.

DATES: *Effective date:* July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2025-0039 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58-213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9826 or (202) 366-9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Carla Rush (email: Carla.Rush@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202-366-1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove the obsolete FMVSS No. 216, “Roof crush resistance, Applicable unless a vehicle is certified to § 571.216a,” which originally went into effect on September 1, 1973. It established strength requirements for the passenger compartment roof of

vehicles. NHTSA has since implemented an updated roof crush resistance standard in FMVSS No. 216a, for which a multi-year phase-in required full compliance by Model Year 2016. Since FMVSS No. 216 is no longer necessary, this final rule removes it and modifies FMVSS No. 216a to clarify its applicability. NHTSA received a comment from The People’s Republic of China, but the comment is outside the scope of the rulemaking.² The People’s Republic of China requested a two-year phase-in for vehicles that are compliant with FMVSS No. 216; however, full compliance with FMVSS No. 216a was required by model year 2016.

For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 216 and FMVSS No. 216a in this final rule without amendment.

This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacture.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent

¹ 90 FR 22983.

² Docket number NHTSA-2025-0039, document number NHTSA-2025-0039-0002.

unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”³

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the

criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and only removes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or

disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone

³ Public Law 117–58.

obtained a State common law tort judgment against the manufacturer— notwithstanding the manufacturer's compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4).

Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures. To do so, the Operating Administration

“must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.” This rulemaking, which removes FMVSS No. 216 in its entirety and modifies FMVSS No. 216a to clarify its applicability, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the removal of FMVSS No. 216 in its entirety and modification of FMVSS No. 216a to clarify its applicability, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that

an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted “public version” of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This “public version” should contain only the portions for

which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Motor vehicles.

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.

§ 571.216 [Removed]

■ 2. Remove § 571.216.

§ 571.216a [Amended]

■ 3. Amend § 571.216a by removing paragraph S3.1(c).

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11068 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0035]

RIN 2127–AM86

Federal Motor Vehicle Safety Standards No. 206; Door Locks and Door Retention Components

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete requirements from Federal Motor Vehicle Safety Standard (FMVSS) No. 206, “Door locks and door retention components.” The agency received no comment on the proposed changes to FMVSS No. 206 and therefore the agency is adopting the changes in this final rule.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0035 through any of the following methods:

• *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

• *Fax:* (202) 493–2251.

• *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact James Myers (email: James.Myers@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove S4.1.3.2 in FMVSS No. 206, “Door locks and door retention components,” because the requirements in this section are redundant. Paragraph S4.1.3.2 purports to include requirements for side rear door locks. Paragraph S4.1.3.2 currently appears immediately following S4.1.2.3(b) in the standard, with no S4.1.3 or S4.1.3.1 appearing in the standard. Paragraph S4.1.3.2 was intended to have been deleted during updates to the regulatory text implemented in a 2007 final rule.² That rule included requirements for rear door locks in S4.3.1. Therefore, S4.1.3.2 is unnecessary, and NHTSA proposed to delete it.

NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 206 in this final rule without amendment.

¹ 90 FR 22973.

² 72 FR 5385 (Feb. 6, 2007).

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”³

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because it deletes redundant text. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require

consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and only deletes redundant requirements; the rule will not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect

³ Public Law 117–58.

a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer— notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).⁴ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁵ The Department’s Operating Administrations (OAs) may apply CEs established in another OA’s procedures.⁶ To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.”⁷ This rulemaking, which removes unnecessary regulatory text from FMVSS No. 206, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary

circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 206, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus

⁴ See DOT Order 5610.1D § 9.

⁵ *Id.* § 9(b).

⁶ *Id.* § 9(f).

⁷ *Id.*

standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under

ADDRESSES. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION

CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[]". You are also required to submit to the Office of Chief Counsel one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Motor Vehicles.

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.

§ 571.206 [Amended]

■ 2. Amend § 571.206 by removing paragraph S4.1.3.2.

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11079 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0040]

RIN 2127–AM91

Federal Motor Vehicle Safety Standards No. 217; Bus Emergency Exits and Window Retention and Release

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete requirements from Federal Motor Vehicle Safety Standard (FMVSS) No. 217, Bus emergency exits and window retention and release. The agency received no comment on the proposed changes to FMVSS No. 217, and therefore the agency is adopting the changes in this final rule.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0040 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the

street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Cristina Echemendia (email: Cristina.Echemendia@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove obsolete requirements from FMVSS No. 217 because the requirements apply to school buses manufactured before September 1, 1994. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 217 in this final rule without amendment. This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacture.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches

that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I conclude and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and removes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates

¹ 90 FR 23006.

² Public Law 117–58.

information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the

existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.

The Department’s Operating Administrations (OAs) may apply CEs established in another OA’s procedures. To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.” This rulemaking, which removes unnecessary regulatory text from FMVSS No. 217, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 217, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The

amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT’s compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted “public version” of your petition (including redacted versions of any additional documents or attachments) using any of

the methods identified under **ADDRESSES**. This “public version” should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (i.e., the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Buses, Motor vehicle safety, Motor vehicles.

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 § 571.217 as follows:

■ a. Revise the introductory text of paragraph S5.2.3; and

■ b. Remove paragraph S5.2.3.4.

The revisions read as follows:

§ 571.217 Standard No. 217; Bus emergency exits and window retention and release.

* * * * *

S5.2.3 *School buses.* Each school bus shall comply with S5.2.3.1 through S5.2.3.3.

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11070 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0034]

RIN 2127–AM85

Federal Motor Vehicle Safety Standards No. 205; Glazing Materials; No. 205(a), Glazing Equipment Manufactured Before September 1, 2006, and Glazing Materials Used in Vehicles Manufactured Before November 1, 2006

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove the obsolete Federal Motor Vehicle Safety Standard (FMVSS) No. 205(a), Glazing equipment manufactured before September 1, 2006, and glazing materials used in vehicles

manufactured before November 1, 2006. The agency received no comment on the proposed removal of FMVSS No. 205(a) and therefore the agency is adopting the changes in this final rule.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0034 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to www.regulations.gov, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact James Myers (email: James.Myers@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove the obsolete requirements of FMVSS No. 205(a) and revise the applicability of FMVSS No. 205. The text removed from FMVSS No. 205 and the entirety of FMVSS No. 205(a) apply only to glazing equipment manufactured before September 1, 2006, and to motor vehicles manufactured

before November 1, 2006. The following standards appear in FMVSS No. 205(a): ANSI Z26.1–1977, ANSI Z26.1a–1980, and SAE Recommended Practice J673a, “Automotive Glazing,” revised August 1967. Because these three standards are incorporated by reference only in FMVSS No. 205(a), NHTSA proposed to remove the IBR material from 49 CFR 571.5.

NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed removal of FMVSS No. 205(a) from the Code of Federal Regulations in this final rule without amendment.

This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacture.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental

stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking required to publish a proposed rule by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because it only deletes obsolete regulatory text. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in

¹ 90 FR 22986.

² Pub. L. 117–58.

1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and only deletes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).³ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁴ The Department’s Operating Administrations (OAs) may apply CEs established in another OA’s procedures.⁵ To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and

³ See DOT Order 5610.1D § 9.

⁴ *Id.* § 9(b).

⁵ *Id.* § 9(f).

coordinate with the originating OA to ensure that the CE is being applied correctly.”⁶ This rulemaking, which removes FMVSS No. 205(a) in its entirety and modifies FMVSS No. 205 to clarify its applicability, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the removal of the obsolete requirements of FMVSS No. 205(a), changes made to FMVSS No. 205, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other

administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

Regulation Identifier Number (RIN)

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Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted “public version” of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This “public version” should contain only the portions for which no claim of confidential treatment is made and from which those

portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (i.e., the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR part 571

Incorporation by reference, Motor vehicle safety, Motor vehicles.

⁶ *Id.*

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 § 571.5 by:

- a. Removing paragraphs (c)(2) and (3);
- b. Redesignating paragraphs (c)(4) and (5) as paragraphs (c)(2) and (3), respectively;
- c. Revising paragraphs (d)(1) and (10);
- d. Removing paragraph (l)(17); and
- e. Redesignating paragraphs (l)(18) through (51) as paragraphs (l)(17) through (50), respectively.

The revisions read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(d) * * *

(1) 1985 Annual Book of ASTM Standards, Vol. 05.04, “Test Methods for Rating Motor, Diesel, Aviation Fuels, A2. Reference Materials and Blending Accessories, (“ASTM Motor Fuels section”),” A2.3.2, A2.3.3, and A2.7, into § 571.108.

* * * * *

(10) ASTM D362–84, “Standard Specification for Industrial Grade Toluene,” approved March 30, 1984, into § 571.108.

* * * * *

■ 3. Amend § 571.205 by revising paragraphs S3 and S5.1.2 to read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks designed to carry at least one person, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion and low speed vehicles, and to glazing materials for use in those vehicles.

* * * * *

S5.1.2 *Aftermarket replacement glazing.* Glazing intended for aftermarket replacement is required to meet the requirements of this standard.

* * * * *

§ 571.205(a) [Removed]

■ 4. Remove § 571.205(a).

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11082 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0037]

RIN 2127–AM88

Federal Motor Vehicle Safety Standards No. 210; Seat Belt Assembly Anchorages

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove unnecessary regulatory text from Federal Motor Vehicle Safety Standard (FMVSS) No. 210, Seat belt assembly anchorages. The agency received no comment on the proposed changes to FMVSS No. 210, and therefore the agency is adopting the changes in this final rule.

DATES:

Effective Date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0037 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any

personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Joshua McNeil (email: Joshua.McNeil@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove references to dates for certain requirements in FMVSS No. 210. Because the requirements specify that they are applicable for vehicles manufactured after dates that have long passed (September 1, 1987 and October 21, 2011), the dates in the regulatory text are no longer needed. This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacture. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 210 in this final rule without amendment.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those

¹ 90 FR 22964.

taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which deletes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and only deletes obsolete requirements; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to

provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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

² Public Law 117–58.

generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer— notwithstanding the manufacturer's compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the

quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).³ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁴ The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures.⁵ To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly."⁶ This rulemaking, which removes unnecessary regulatory text from FMVSS No. 210, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 210, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the

³ See DOT Order 5610.1D § 9.

⁴ *Id.* § 9(b).

⁵ *Id.* § 9(f).

⁶ *Id.*

docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under

ADDRESSES. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR Part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[.]" You are also required to submit to the Office of Chief Counsel one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business

information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Motor Vehicles.

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 § 571.210 by:

■ a. Revising paragraphs S4.1.2(a) and S4.1.3.1;

■ b. Revising the introductory text of paragraph S4.1.3.2;

■ c. Revising paragraphs S4.1.3.4, S4.1.3.5 and S6.

The revisions read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S4.1.2 (a) Notwithstanding the requirement of S4.1.1, each vehicle that is equipped with an automatic restraint at the front right outboard designated seating position, which automatic restraint cannot be used for securing a child restraint system or cannot be adjusted by the vehicle owner to secure a child restraint system solely through the use of attachment hardware installed as an item of original equipment by the vehicle manufacturer, shall have, at the manufacturer's option, either anchorages for a Type 1 seat belt assembly installed at that position or a Type 1 or Type 2 seat belt assembly installed at that position. If a manufacturer elects to install anchorages for a Type 1 seat belt assembly to comply with this requirement, those anchorages shall consist of, at a minimum, holes threaded to accept bolts that comply with S4.1(f) of Standard No. 209 (49 CFR 571.209).

* * * * *

S4.1.3.1 Seat belt anchorages for school bus passenger seats must be attached to the school bus seat structure,

including seats with wheelchair positions or side emergency doors behind them. Seats with no other seats behind them, no wheelchair positions behind them and no side emergency door behind them are excluded from the requirement that the seat belt anchorages must be attached to the school bus seat structure. For school buses with a GVWR less than or equal to 4,536 kg (10,000 pounds), the seat belt shall be Type 2 as defined in S3. of FMVSS No. 209 (49 CFR 571.209). For school buses with a GVWR greater than 4,536 kg (10,000 pounds), the seat belt shall be Type 1 or Type 2 as defined in S3. of FMVSS No. 209 (49 CFR 571.209).

S4.1.3.2 Type 2 seat belt anchorages on school buses must meet the following location requirements.

* * * * *

S4.1.3.4 School buses with a GVWR greater than 4,536 kg (10,000 pounds), with Type 1 seat belt anchorages, must meet the strength requirements specified in S4.2.1 of this standard.

S4.1.3.5 School buses with a GVWR greater than 4,536 kg (10,000 pounds), with Type 2 seat belt anchorages, must meet the strength requirements specified in S4.2.2 of this standard.

* * * * *

S6. *Owner's Manual Information.* The owner's manual in each vehicle with a gross vehicle weight rating of 4,536 kg or less shall include:

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026-11081 Filed 6-2-26; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2025-0043]

RIN 2127-AM94

Federal Motor Vehicle Safety Standards No. 303; Fuel System Integrity of Compressed Natural Gas Vehicles

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to

remove obsolete text in Federal Motor Vehicle Safety Standard (FMVSS) No. 303, “Fuel system integrity of compressed natural gas vehicles”. The agency received no comment on the proposed changes to FMVSS No. 303, and therefore the agency is adopting the changes in this final rule.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0043 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ian MacIntire (email: Ian.MacIntire@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove obsolete text in FMVSS No. 303, “Fuel system integrity of compressed natural gas vehicle.” This

proposal removes references to dates for requirements in S5.1.1 and S5.1.2 that passed more than a decade ago. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 303 in this final rule without amendment. This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacturer.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses**Executive Orders 12866 and 13563**

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete

regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and

¹ 90 FR 22979.

² Public Law 117–58.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and removes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).³ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁴ The Department’s Operating Administrations (OAs) may apply CEs established in another OA’s procedures.⁵ To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.”⁶ This rulemaking, which removes unnecessary regulatory text from FMVSS No. 303, is categorically excluded pursuant to 23 CFR 771.118(c)(4): “Planning and

³ See DOT Order 5610.1D § 9.

⁴ *Id.* § 9(b).

⁵ *Id.* § 9(f).

⁶ *Id.*

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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 303, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT’s compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted “public version” of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This “public version” should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the

materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[].” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Motor Vehicles.

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 § 571.303 by revising paragraphs S5.1.1 and S5.1.2 as follows:

§ 571.303 Standard No. 303; Fuel system integrity of compressed natural gas vehicles.

* * * * *

S5.1.1 Vehicles with a GVWR of 10,000 pounds or less. Each passenger car, multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less that uses CNG as a motor fuel shall meet the requirements of S6, except S6.4.

S5.1.2 School buses with a GVWR greater than 10,000 pounds. Each school bus with a GVWR greater than 10,000 pounds that uses CNG as a motor fuel shall meet the requirements of S6.4.

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026-11069 Filed 6-2-26; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2025-0036]

RIN 2127-AM87

Federal Motor Vehicle Safety Standards No. 207; Seating Systems

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete requirements from Federal Motor Vehicle Safety Standards (FMVSS) No. 207, Seating Systems. The agency received no comment on the proposed changes to FMVSS No. 207, and therefore the agency is adopting the changes in this final rule.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2025-0036 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493-2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58-213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9826 or (202) 366-9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Garry Brock (email: Garry.Brock@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202-366-1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove obsolete requirements from FMVSS No. 207, Seating systems. The requirement in S4.2 applies to passenger seats on school buses manufactured before October 21, 2011, and therefore, this requirement is obsolete. This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacturer. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 207 in this final rule without amendment.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by

Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I

¹ 90 FR 23002.

² Public Law 117-58.

have concluded and hereby certify that this rule, which only deletes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information,

unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and deletes obsolete requirements; the rule would not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and

administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could

not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).³ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁴ The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures.⁵ To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly."⁶ This rulemaking, which removes unnecessary regulatory text from FMVSS No. 207, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR

4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 207, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[]". You are also

³ See DOT Order 5610.1D § 9.

⁴ *Id.* § 9(b).

⁵ *Id.* § 9(f).

⁶ *Id.*

required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Motor vehicles.

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. In § 571.207, revise the introductory text of paragraph S4.2 to read as follows:

§ 571.207 Standard No. 207; Seating systems.

* * * * *

S4.2. *General performance requirements.* When tested in accordance with S5, each occupant seat shall withstand the following forces, in newtons, except for: a side-facing seat; a passenger seat on a bus other than a school bus; and, a passenger seat on a school bus with a GVWR greater than 4,536 kilograms (10,000 pounds).

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11078 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0041]

RIN 2127–AM92

Federal Motor Vehicle Safety Standards No. 222; School Bus Passenger Seating and Crash Protection

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete requirements from Federal Motor Vehicle Safety Standard (FMVSS) No. 222, “School bus passenger seating and crash protection.” The agency received no comment on the proposed changes to FMVSS No. 222, and therefore the agency is adopting the changes in this final rule.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0041 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street

address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact James Myers (email: James.Myers@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove obsolete requirements from FMVSS No. 222, School bus passenger seating and crash protection. This proposal removes requirements that are no longer applicable. Several of the obsolete requirements apply to school buses manufactured before a specific date, including: S5(a)(1), for buses manufactured before October 21, 2011; S5(b)(1)(i), for buses manufactured before September 1, 1991; and S5.1.2(a), for buses manufactured before October 21, 2009. In addition, this proposal removes references to dates for requirements in S5.1.6 and S5.1.7 that passed more than a decade ago. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 222 in this final rule without amendment. This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacture.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those

¹ 90 FR 22991.

taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and removes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to

provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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

² Public Law 117–58.

generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer— notwithstanding the manufacturer's compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the

quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).³ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁴ The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures.⁵ To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly."⁶ This rulemaking, which removes unnecessary regulatory text from FMVSS No. 222, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 222, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the

³ See DOT Order 5610.1D § 9.

⁴ *Id.* § 9(b).

⁵ *Id.* § 9(f).

⁶ *Id.*

docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under

ADDRESSES. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[]." You are also required to submit to the Office of Chief Counsel one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business

information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Buses, Motor vehicle safety, Motor Vehicles.

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 § 571.222 by revising paragraphs S5(a), S5(b)(1), S5.1.2, introductory text of S5.1.6, and introductory text of S5.1.7 to read as follows:

§ 571.222 Standard No. 222; School bus passenger seating and crash protection.

* * * * *

S5. * * *
(a) *Large school buses.* Each school bus with a gross vehicle weight rating of more than 4,536 kg (10,000 pounds) shall be capable of meeting any of the requirements set forth under this heading when tested under the conditions of S6 of this standard or § 571.210. However, a particular school bus passenger seat (*i.e.*, a test specimen) in that weight class need not meet further requirements after having met S5.1.2 and S5.1.5, or having been subjected to either S5.1.3, S5.1.4, S5.1.6 (if applicable), or S5.3. If S5.1.6.5.5(b) is applicable, a particular test specimen need only meet S5.1.6.5.5(b)(1) or (2) as part of meeting S5.1.6 in its entirety.

Each vehicle with voluntarily installed Type 1 seat belts and seat belt anchorages at W seating positions in a bench seat, voluntarily installed Type 2 seat belts and seat belt anchorages at Y seat belt positions in a fixed occupancy seat, or voluntarily installed Type 2 seat belts and seat belt anchorages at Y and Y + 1 seat belt positions in a flexible occupancy seat, shall also meet the requirements of:

(1) S4.4.3.2 of Standard No. 208 (49 CFR 571.208);

(2) Standard No. 209 (49 CFR 571.209), as they apply to school buses; and,

(3) Standard No. 210 (49 CFR 571.210) as it applies to school buses with a gross vehicle weight rating greater than 10,000 pounds.

(b) * * *

(1) The requirements of S4.4.3.2 of § 571.208 and the requirements of §§ 571.207, 571.209 and 571.210 as they apply to school buses with a gross vehicle weight rating of 4,536 kg or less; and,

* * * * *

S5.1.2 *Seat back height, position, and surface area.* Each school bus passenger seat must be equipped with a seat back that has a vertical height of at least 610 mm (24 inches) above the seating reference point. The minimum total width of the seat back at 610 mm (24 inches) above the seating reference point shall be 75 percent of the maximum width of the seat bench. Each school bus passenger seat must be equipped with a seat back that, in the front projected view, has front surface area above the horizontal plane that passes through the seating reference point, and below the horizontal plane 610 mm (24 inches) above the seating reference point, of not less than 90 percent of the seat bench width in millimeters multiplied by 610.

* * * * *

S5.1.6 *Quasi-static test of compartmentalization and Type 2 seat belt performance.* This section applies to school buses with a gross vehicle weight rating expressed in the first column of Tables 2 through 4, and that are equipped with Type 2 seat belt assemblies.

* * * * *

S5.1.7 *Buckle side length limit.* This section applies to rear passenger seats on school buses that are equipped with Type 1 or Type 2 seat belt assemblies. All portions of the buckle/latchplate assembly must remain rearward of the limit plane defined in S5.1.7.1 when tested under the conditions of S5.1.7.2.

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026-11076 Filed 6-2-26; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571****[Docket No. NHTSA–2025–0044]****RIN 2127–AM95****Federal Motor Vehicle Safety Standards No. 304; Compressed Natural Gas Fuel Container Integrity****AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).**ACTION:** Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete text in Federal Motor Vehicle Safety Standard (FMVSS) No. 304, “Compressed natural gas fuel container integrity”. The agency received no comment on the proposed changes to FMVSS No. 304, and therefore the agency is adopting the changes in this final rule.

DATES:*Effective date:* July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0044 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the street address listed above. Follow the

online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ian MacIntire (email: Ian.MacIntire@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to amend FMVSS No. 304 by removing obsolete text in the standard. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to FMVSS No. 304 in this final rule without amendment. This action does not affect the applicability of 49 U.S.C. 30122, which prohibits certain entities from making inoperative any part of a device or element of design installed in vehicle pursuant to an FMVSS applicable on the date of manufacturer.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses**Executive Orders 12866 and 13563**

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent

unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the

¹ 90 FR 22976.² Public Law 117–58.

criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and removes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or

disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone

obtained a State common law tort judgment against the manufacturer— notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).³ In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.⁴ The Department’s Operating

³ See DOT Order 5610.1D § 9.

⁴ *Id.* § 9(b).

Administrations (OAs) may apply CEs established in another OA's procedures.⁵ To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly."⁶ This rulemaking, which removes unnecessary regulatory text from FMVSS No. 304, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 304, defines any necessary key terms, and

provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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ADDRESSES. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[]." You are also required to submit to the Office of Chief Counsel one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (i.e., the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the

⁵ *Id.* § 9(f).

⁶ *Id.*

request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR part 571

Imports, Motor vehicle safety, Motor vehicles.

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 § 571.304 by revising paragraph S6.2 as follows:

§ 571.304 Standard No. 304; Compressed natural gas fuel container integrity.

* * * * *

S6.2 Each CNG fuel container shall meet the requirements of S7 through S7.4.

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11075 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0042]

RIN 2127–AM93

Federal Motor Vehicle Safety Standards No. 301; Fuel System Integrity

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete requirements from Federal Motor Vehicle Safety Standard (FMVSS) No. 301, “Fuel System Integrity.” The agency received three comments on the proposed changes to FMVSS No. 301. The agency is adopting a revised version of the proposed changes in this final rule based on the comments received.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0042 through any of the following methods:

- **Electronic Submissions:** Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** (202) 493–2251.
- **Mail or Hand Delivery:** Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ian MacIntire (email: Ian.MacIntire@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025, proposing to remove obsolete requirements in FMVSS No. 301, Fuel system integrity,” that only pertain to vehicles manufactured in prior years. Specifically, the agency proposed to revise paragraphs S6.2 and S6.3 by deleting rear and side impact test specifications that pertain only to vehicles manufactured before September 1, 2006, and September 1, 2004, respectively.

NHTSA received two comments from anonymous commenters and one comment from the Alliance for

Automotive Innovation (Auto Innovators). The two anonymous commenters expressed full support of the proposal.

Auto Innovators stated strong support for the proposed rule and the agency’s efforts to eliminate outdated or burdensome regulations. Auto Innovators stated that it agrees that the provisions proposed for removal are no longer relevant to current production.

Auto Innovators also identified several additional instances of obsolete phase-in requirements in FMVSS No. 301. Specifically, Auto Innovators suggested the following updates to FMVSS No. 301:

- Replacing S7.2 using a revised paragraph S7.2(b),
- Removing S7.2(a), which contains an obsolete compliance date,
- Revising S7.2(b) to remove the date reference and use as S7.2,
- Replacing S7.3 using a revised paragraph S7.3(b),
- Removing S7.3(a), which contains an obsolete compliance date,
- Revising S7.3(b) to remove the date reference and use as S7.3, and
- Removing S8, which contains an obsolete phase-in requirement schedule.

NHTSA has reviewed Auto Innovators’ suggested revisions and agrees that these revisions fall within the scope of the proposed revisions, as all of Auto Innovator’s suggested revisions are also focused on removing obsolete phase-in requirements from the standard. Accordingly, NHTSA includes these revisions in the final rule.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further

¹ 90 FR 22999.

recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will

submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and removes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires

Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this final rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of

² H.R. 3684 (117th Congress) (2021).

NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a

categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures. To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.” This rulemaking, which removes unnecessary regulatory text from FMVSS No. 301, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the

changes made to FMVSS No. 301, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted “public version” of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This “public version” should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email,

please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Motor vehicles.

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 § 571.301 by
 - a. Revising paragraphs S6.2, S6.3, and S7.2;
 - b. Removing and reserving paragraph S7.3(a);
 - c. Revising introductory text of paragraph S7.3(b); and
 - d. Removing paragraph S8.

The revisions read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S6.2 Rear moving barrier crash.
When the vehicle is impacted from the rear by a moving deformable barrier 80 ± 1.0 km/h with a 70 percent overlap, with 50th percentile test dummies as specified in part 572 of this chapter at each front outboard designated seating position, under the applicable conditions of S7, fuel spillage must not exceed the limits of S5.5.

S6.3 Side moving barrier crash.
When the vehicle is impacted laterally on either side by a moving deformable barrier at 53 ± 1.0 km/h with the appropriate 49 CFR part 572 test dummies specified in FMVSS No. 214 (§ 571.214) at positions required for testing by S7.2.2 of FMVSS No. 214, under the applicable conditions of S7 of this standard, fuel spillage shall not exceed the limits of S5.5 of this standard.

* * * * *

S7.2 Side moving barrier test conditions. The side moving deformable barrier crash test conditions are those specified in S8 of FMVSS No. 214 (49 CFR 571.214).

S7.3 Rear moving barrier test conditions.

(a) [Reserved]

(b) The rear moving deformable barrier is the same as that shown in Figure 2 of FMVSS No. 214 (49 CFR 571.214) and specified in 49 CFR part 587, except as otherwise specified in paragraph S7.3. The barrier and test

vehicle are positioned so that at impact—

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11077 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2025–0038]

RIN 2127–AM89

Federal Motor Vehicle Safety Standard No. 214; Side Impact Protection; Federal Motor Vehicle Safety Standard No. 305a; Electric-Powered Vehicles: Electric Powertrain Integrity; Federal Motor Vehicle Safety Standard No. 307; Fuel System Integrity of Hydrogen Vehicles

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete requirements from Federal Motor Vehicle Safety Standard (FMVSS) No. 214, “Side Impact Protection.” The agency received two comments that supported the changes to FMVSS No. 214. In addition, one of the commenters suggested amendments to remove additional obsolete regulatory text. NHTSA is adopting the proposed changes with amendments made in response to the comments. The final rule also amends FMVSS No. 305a, “Electric-Powered Vehicles: Electric Powertrain Integrity” and FMVSS No. 307, “Fuel System Integrity of Hydrogen Vehicles” to delete reference to sections of FMVSS No. 214 removed by this final rule.

DATES:

Effective Date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0038 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>

www.regulations.gov. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Cristina Echemendia (email: Cristina.Echemendia@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025, that proposed revising sections of Federal Motor Vehicle Safety Standard (FMVSS) No. 214 and 49 CFR part 571.5, Matter incorporated by reference. The agency proposed revising paragraphs S3, S5(b)(3), S7.1, S7.2(a), S7.2(b), S7.2.1, S7.2.2, S7.2.4, S9.1.1, S9.1.2, S9.1.3, S11.5(a), S12.1, and S13 of FMVSS No. 214 and amending paragraph (l)(23) of Part 571.5. The proposed revisions were intended to remove obsolete requirements from FMVSS No. 214. NHTSA received two comments in response to the NPRM: an anonymous comment in support of removal of obsolete requirements and comments from the Alliance for Automotive Innovation (Auto Innovators). Auto Innovators supported the proposal to amend FMVSS No. 214 because the text being removed is no longer applicable to vehicles being produced. Auto Innovators suggested that S8.3.2 of FMVSS No. 214 be

removed because it pertains to a test device no longer used in compliance tests (the 50th Percentile Male SID Dummy defined in 49 CFR part 572 Subpart F), and that S11.5(a) be removed because it relates to data processing requirements for that unused test device. Auto Innovators also noted a typographical error in the NPRM that incorrectly referred to § 571.214 as “571.14.”

In this final rule, NHTSA is removing paragraph S11.5(a) from FMVSS No. 214 as suggested by Auto Innovators. This final rule is removing, reserving, or revising the other paragraphs of FMVSS No. 214 as proposed in the NPRM except for S7.2.2, S8.3.2 and S12.1. NHTSA is revising rather than removing S7.2.2, retaining S12.1 unedited, and making no changes to S8.3.2 because those sections are referenced in other FMVSSs. FMVSS No. 214 paragraphs S8.3.2 and S12.1 are referenced by FMVSS No. 201, “Occupant protection in interior impact” which is not being amended by this final rule. FMVSS No. 214 paragraph S7.2.2 is referenced by both FMVSS No. 305a, “Electric-powered vehicles: Electric powertrain integrity; mandatory applicability begins on September 1, 2027,” and FMVSS No. 307, “Fuel system integrity of hydrogen vehicles.” While these FMVSS are being amended by this final rule to remove references to S7.1.1 and S7.2.1, the reference to S7.2.2 remains. As a consequence of retaining S12.1, NHTSA is also not including any changes to incorporations by reference in this final rule because those are located in S12.1.

As proposed in the NPRM, the definition of “raised roof” is being revised. Currently, FMVSS No. 214 defines the term by referencing paragraph S4 of FMVSS No. 216, “Roof crush resistance; Applicable unless a vehicle is certified to § 571.216a.” A separate deregulatory action will remove FMVSS No. 216 from the Code of Federal Regulations.² As a result, the definition of “raised roof” must be included in FMVSS No. 214.

This final rule also amends FMVSS No. 305a and FMVSS No. 307 to remove reference to sections of FMVSS No. 214 that are being removed by this final rule. Previously, 49 CFR 571.305a S9.3 and 49 CFR 571.307 S6.1.3 referred to, “positions required for testing by S7.1.1, S7.2.1, or S7.2.2 of Standard 214 (§ 571.214)”. Because this final rule removes sections S7.1.1 and S7.2.1 of FMVSS No. 214, we are revising the respective sections of FMVSS No. 305a and FMVSS No. 307 to read, “positions

required for testing by S7.2.2 of FMVSS No. 214 (§ 571.214).” This amendment makes no change in requirements because S7.1.1 and S7.2.1 are no longer valid. The same amendment is also being made to FMVSS No. 301 in a separate deregulatory action.³

NHTSA finds good cause pursuant to 5 U.S.C. 553(b)(B) to publish the amendments to FMVSS Nos. 305a and 307, which were not proposed in the May 30, 2025 NPRM, without prior notice and opportunity for public comment. NHTSA finds that prior notice and opportunity for public comment is unnecessary because the provisions being amended refer to obsolete requirements that are being deleted and do not result in changes to any existing requirements. Deletion of obsolete regulatory text is nonsubstantive and unlikely to generate public interest or comment. NHTSA has made the deletions to keep its regulations current.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders. This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum

¹ 90 FR 22995.

² 90 FR 22983 (May 30, 2025).

³ 90 FR 22999 (May 30, 2025).

extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”⁴

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and would only remove obsolete requirements; the rule will not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this final rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard.

⁴Public Law 117–58.

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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures. To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally

excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly." This rulemaking, which removes unnecessary regulatory text from FMVSS Nos. 214, 305a, and 307, 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 has coordinated with the Federal Transit Administration (FTA) FTA to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the removal of the obsolete requirements of FMVSS Nos. 214, 305a, and 307; changes made to FMVSS No. 205; defines any necessary key terms; and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other

administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those

portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

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 § 571.214 as follows:

- a. Revise definition of “raised roof” in S3;
- b. Revise paragraph S5(b)(3);
- c. Remove and reserve paragraph S7.1;
- d. Remove paragraphs S7.1.1 and S7.1.2;
- e. Remove and reserve paragraph S7.2.1;
- f. Revise paragraph S7.2.2;
- g. Remove and reserve paragraphs S7.2.4 and S9.1.1;
- h. Revise paragraph S9.1.2;
- i. Remove paragraph S9.1.3;
- j. Remove and reserve paragraph S11.5(a); and
- k. Remove paragraph S13.

The revisions read as follows:

§ 571.214; Standard No. 214; Side impact protection.

* * * * *

S3. Definitions

* * * * *

Raised roof means, with respect to a roof which includes an area that protrudes above the surrounding exterior roof structure, that protruding area of the roof.

* * * * *

S5 * * *

(b) * * *

(3) Passenger cars, multipurpose passenger vehicles, trucks and buses need not meet the requirements of S7 (moving deformable barrier test) as applied to the rear seat for side-facing rear seats and for rear seating areas that are so small that a Part 572 Subpart V dummy representing a 5th percentile adult female cannot be accommodated according to the positioning procedure specified in S12.3.4 of this standard.

* * * * *

S7.2.2 Each vehicle must meet the requirements of S7.2.5 and S7.2.6, when tested with the test dummy specified in those sections. Place the Subpart U ES-2re 50th percentile male dummy in the front seat and the Subpart V SID-1Is 5th percentile female test dummy in the rear seat. The test dummies are placed and positioned in the front and rear outboard seating positions on the struck side of the vehicle, as specified in S11

and S12 of this standard (49 CFR 571.214).

* * * * *

S9.1.2 Each vehicle must meet the requirements of S9.2.1, S9.2.2 and S9.2.3, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

* * * * *

3. Amend § 571.305a by revising paragraph S9.3 to read as follows:

§ 571.305a; Standard No. 305a; electric-powered vehicles: Electric powertrain integrity; mandatory applicability begins on September 1, 2027.

* * * * *

S9.3 *Side moving deformable barrier impact.* The test vehicle, with the appropriate 49 CFR part 572 test dummies specified in FMVSS No. 214 (§ 571.214) at positions required for testing by S7.2.2 of FMVSS No. 214, is impacted laterally on either side by a moving deformable barrier moving at any speed between 52.0 km/h and 54.0 km/h.

* * * * *

4. Amend § 571.307 by revising paragraph S6.1.3 to read as follows:

§ 571.307; Standard No. 307; Fuel system integrity of hydrogen vehicles.

* * * * *

S6.1.3. *Side moving deformable barrier impact.* The test vehicle, with the appropriate 49 CFR part 572 test dummies specified in FMVSS No. 214 (§ 571.214) at positions required for testing by S7.2.2 of FMVSS No. 214, is impacted laterally on either side by a moving deformable barrier moving at any speed between 52.0 km/h and 54.0 km/h.

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,

Administrator.

[FR Doc. 2026–11072 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2025–0032]

RIN 2127–AM84

Federal Motor Vehicle Safety Standards No. 204; Steering Control Rearward Displacement

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Federal Motor Vehicle Safety Standard No. 204, Steering Control Rearward Displacement, so that it no longer applies to vehicles certified to the frontal barrier crash protection requirements of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The agency received one comment that supported the proposed changes to FMVSS No. 204. In addition, the commenter suggested additional amendments to remove obsolete regulatory text. NHTSA is adopting the proposed changes and the additional amendments suggested by the commenter.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2025–0032 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any

personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Gary Brock at Garry.Brock@dot.gov. For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025, proposing to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 204, Steering Control Rearward Displacement. This safety standard specifies requirements that limit the rearward displacement of the steering column in a frontal crash. NHTSA proposed to exclude vehicles from FMVSS No. 204 if they are certified to the frontal barrier crash protection requirements of FMVSS No. 208. NHTSA received one comment on this proposal. Alliance for Automotive Innovation (Auto Innovators) commented in support of the proposed amendments to FMVSS No. 204. Auto Innovators agreed with the conclusion reached by NHTSA that the frontal crash protection requirements of FMVSS No. 208 are sufficient to ensure limited steering column motion and occupant protection.

In their comments, Auto Innovators also noted that section S4.1 of FMVSS No. 204 includes an obsolete compliance date. S4.1 applies to vehicles manufactured before September 1, 1991, while S4.2 applies to vehicles manufactured on or after September 1, 1991. Auto Innovators suggested removing S4.1 and replacing the introductory text of S4 with a revised version of S4.2. NHTSA agrees with this suggestion and believes that it is consistent with the proposal. NHTSA finds that, pursuant to 5 U.S.C. 553(b)(B) providing prior notice and opportunity for comment on these additional changes to remove obsolete text is unnecessary. Removal of text that is no longer applicable is not substantive and unlikely to result in public interest or comment. NHTSA is

updating the regulatory text so that it is current.

Therefore, NHTSA is adopting the proposed changes to FMVSS No. 204 and the further changes suggested by Auto Innovators.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses**Executive Orders 12866 and 13563**

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any

¹ 90 FR 22968.

² Public Law 117–58.

rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes duplicative requirements and obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and only removes duplicative requirements and obsolete text; the rule would not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer— notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures. To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly." This rulemaking, which removes unnecessary regulatory text from FMVSS No. 204, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this

CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 204, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide

Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE

CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, motor vehicles.

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 § 571.204 by:

- a. Revising paragraphs S2 and S4 and
- b. Removing paragraphs S4.1 and S4.2.

The revisions read as follows:

§ 571.204 Standard No. 204; Steering control rearward displacement.

* * * * *

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses. However, it does not apply to vehicles certified to S14 of Standard No. 208 (49 CFR 571.208). It also does

not apply to walk-in vans or vehicles without steering controls.

* * * * *

S4. *Requirements.* When a passenger car or a truck, bus or multipurpose passenger vehicle with a gross vehicle weight rating of 4,536 kg or less and an unloaded vehicle weight of 2,495 kg or less is tested under the conditions of S5 in a 48 km/h perpendicular impact into a fixed collision barrier, the upper end of the steering column and shaft in the vehicle shall not be displaced more than 127 mm in a horizontal rearward direction parallel to the longitudinal axis of the vehicle. The amount of displacement shall be measured relative to an undisturbed point on the vehicle and shall represent the maximum dynamic movement of the upper end of the steering column and shaft during the crash test.

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11080 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 585

[Docket No. NHTSA–2025–0030]

RIN 2127–AM82

Removing Obsolete Directives From Phase-In Reporting Requirements

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete directives from the phase-in reporting requirements. The agency received no comment on the proposed changes to the phase-in reporting requirements, and therefore the agency is adopting the changes in this final rule. NHTSA is also updating some sections of Part 585 with the agency’s current address.

DATES:

Effective date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–

2025–0030 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact James Myers (email: James.Myers@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove obsolete directives from its phase-in reporting requirements that pertain only to vehicles manufactured in prior years. A phase-in is a mechanism by which a final rule specifies a certain percentage of a vehicle manufacturer’s vehicles that must comply with the requirements in a final rule in successive model years until all vehicles to which the standard applies comply with the new requirements. Some phase-ins are accompanied by reporting requirements, and Part 585 contains a number of such requirements, many of which have long since expired. The NPRM proposed amendments to delete the advanced air bag phase-in reporting requirements (subpart B); the rear inboard lap/shoulder belt phase-in reporting

¹ 90 FR 23018.

requirements (subpart C); the fuel system integrity phase-in reporting requirements (subpart E); the reporting requirements for tires for motor vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (subpart F); the tire pressure monitoring system phase-in reporting requirements (subpart G); the side impact protection phase-in reporting requirements (subpart H); the electronic stability control system phase-in reporting requirements (subpart I); the head restraints phase-in reporting requirements (subpart J); the ejection mitigation phase-in reporting requirements (subpart K); the roof crush resistance phase-in reporting requirements (subpart L); and the rear visibility improvements reporting requirements (subpart M). The proposed rule would eliminate those directives in 49 CFR part 585 that pertain to vehicles that are being manufactured or will be manufactured.

NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to the phase-in reporting directives in this final rule without amendment.

NHTSA is also updating some sections of Part 585 with the agency's current address. NHTSA has determined that seeking comment on these address changes, which were not included in the proposal, is unnecessary pursuant to 5 U.S.C. 553. Address changes are nonsubstantive and unlikely to generate public interest or comment. NHTSA has updated the addresses so they are current.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a "significant regulatory action" under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not

be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT "shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety."²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule, which removes obsolete regulatory text, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of the UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and only removes obsolete requirements and updates addresses; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government

² Public Law 117–58.

information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the

possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an

environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department’s Operating Administrations (OAs) may apply CEs established in another OA’s procedures. To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.” This rulemaking, which removes unnecessary regulatory text from 49 CFR part 585, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is

discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the removal of the obsolete requirements of FMVSS No. 205(a), changes made to Part 585, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT’s compliance with the Privacy Act, see <https://www.transportation.gov/privacy>. You should submit a redacted “public version” of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under **ADDRESSES**. This “public version” should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[.]” You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at

Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

List of Subjects in 49 CFR Part 585

Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR part 585 as follows:

PART 585—PHASE-IN REPORTING REQUIREMENTS

- 1. The authority citation for Part 585 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

Subpart A—General

- 2. Amend § 585.2 by revising paragraph (f) as follows:

§ 585.2 Phase-in reports.

* * * * *

(f) Be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

- 3. Revise § 585.4 to read as follows:

§ 585.4 Petitions to extend period to file report.

A petition for extension of the time to submit a report required under this part shall be received not later than 15 days before the report is due. The petition shall be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest.

Subparts B and C—[Removed and Reserved]

- 4. Remove and reserve Subparts B and C

Subparts E Through M—[Removed and Reserved]

- 5. Remove and reserve subparts E through M.

Issued under authority delegated in 49 CFR 1.95.

Jonathan Morrison,
Administrator.

[FR Doc. 2026-11071 Filed 6-2-26; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA-2025-0031]

RIN 2127-AM83

Removing Obsolete Procedures From the Consumer Assistance To Recycle and Save Act of 2009

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

ACTION: Final rule.

SUMMARY: On May 30, 2025, NHTSA published a notice of proposed rulemaking (NPRM) proposing to remove obsolete regulations related to the Consumer Assistance to Recycle and Save Act of 2009. The agency received no comment on the proposed changes to the Consumer Assistance to Recycle and Save Act of 2009, and therefore the agency is adopting the changes in this final rule.

DATES:

Effective Date: July 6, 2026.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by July 20, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2025-0031 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Suite W58-213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9826 or (202) 366-9317 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any

personal information provided. Please see the Privacy Act and Instructions for Submission of Confidential Information heading below.

Docket: For access to the docket to read background documents, go to <https://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ian MacIntire (email: Ian.MacIntire@dot.gov). For legal issues, you may contact John Piazza at John.Piazza@dot.gov. You can reach these officials by phone at 202-366-1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published an NPRM¹ on May 30, 2025 proposing to remove obsolete regulatory procedures related to the Consumer Assistance to Recycle and Save Act of 2009, because that program has ended. The rule proposed removing 49 CFR part 599. NHTSA received no comments on this proposal. For the reasons set forth in the May 30, 2025 NPRM, NHTSA is adopting the proposed changes to the Consumer Assistance to Recycle and Save Act of 2009 in this final rule without amendment.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

Regulatory Analyses

Executive Orders 12866 and 13563

This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This regulation is an E.O. 14192 deregulatory action.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and

other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act, Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²

Because the changes adopted in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding international regulatory cooperation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), for any rulemaking where publication of a proposed rule is required by 5 U.S.C. 553 or any other law, agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. I have concluded and hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because it would only delete obsolete regulatory text for a program that has ended. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S.

¹ 90 FR 23022

² Public Law 117–58.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Unfunded Mandates Reform Act

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 (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any one year. Thus, the rule is not subject to the analytical requirements of UMRA.

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 final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This final rule is deregulatory and deletes obsolete regulatory text; the rule does not impose any additional information collection requirements.

E-Government Act Compliance

NHTSA is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or

substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, NHTSA has not conducted a privacy impact assessment.

Executive Order 13132; Federalism Summary Impact Statement

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final rule does 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 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address 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.” 49 U.S.C. 30103(e). 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. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA’s rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer’s compliance with the NHTSA standard. 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. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 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 does not foresee any potential State requirements that might conflict with it. 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 standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary

circumstances are present that would warrant the preparation of an EA or EIS. The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures. To do so, the Operating Administration "must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly." This rulemaking, which removes unnecessary regulatory text from 49 CFR part 599, 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 has coordinated with the Federal Transit Administration (FTA) to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 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.

NHTSA has reviewed this rulemaking action and determined that it conforms to the applicable standards in section 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above in connection with E.O. 13132 (Federalism). NHTSA believes that this final rule specifies clearly the removal of the obsolete requirements of FMVSS No. 205(a), changes made to

Part 585, defines any necessary key terms, and provides a clear legal standard for manufacturers to follow. The amendments do not take effect retroactively. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 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 (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Because the changes in this final rule are deleting obsolete regulatory text, they do not implicate any issues regarding consensus standards.

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.

Privacy Act and Instructions for Submission of Confidential Information

NHTSA will place any petitions for reconsideration received into the docket. Anyone can 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, or other organization). For information on DOT's compliance with the Privacy Act, see <https://www.transportation.gov/privacy>.

You should submit a redacted "public version" of your petition (including redacted versions of any additional documents or attachments) using any of the methods identified under *ADDRESSES*. This "public version" should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

If you submit confidential information, you also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in Part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to Part 512.8; and a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit to the Office of Chief Counsel one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[]". You are also required to submit to the Office of Chief Counsel one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email,

please also email a courtesy copy of the request to John Piazza at *John.Piazza@dot.gov*.

List of Subjects in 49 CFR Part 599

Fuel Economy, Motor Vehicle Safety.

PART 599—[REMOVED AND RESERVED]

■ In consideration of the foregoing, and under the authority of 49 U.S.C. 32901; delegation of authority at 49 CFR 1.95, NHTSA removes and reserves 49 CFR part 599.

Issued under authority delegated in 49 CFR 1.95 and 501.7.

Jonathan Morrison,
Administrator.

[FR Doc. 2026–11074 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 91, No. 106

Wednesday, June 3, 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 Part 39

[Docket No. FAA-2026-4651; Project Identifier AD-2025-01669-E]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) Model GENx-1B64, GENx-1B64/P1, GENx-1B64/P2, GENx-1B67, GENx-1B67/P1, GENx-1B67/P2, GENx-1B70, GENx-1B70/75/P1, GENx-1B70/75/P2, GENx-1B70/P1, GENx-1B70/P2, GENx-1B70C/P1, GENx-1B70C/P2, GENx-1B74/75/P1, GENx-1B74/75/P2, GENx-1B76/P2, GENx-1B76A/P2, GENx-2B67, GENx-2B67B, and GENx-2B67/P engines. This proposed AD was prompted by a report of a fuel leak from a worn main fuel pump inlet housing. This proposed AD would require removal from service of the main fuel pump and replacement with a part eligible for installation. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 20, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2026-4651; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Itanza Young, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 482-6306; email: *itanza.n.young@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA-2026-4651; Project Identifier AD-2025-01669-E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may revise this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important

that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Itanza Young, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report that a Boeing 787-8 Model airplane powered by GENx-1B70/P2 engines experienced a fuel imbalance caused by a fuel leak on the inlet housing of the main fuel pump. A manufacturer investigation revealed that the inlet housing distress was related to the failure of thrust bearing screws inside the housing, which was caused by inadequate torque control practices during overhaul. This condition, if not addressed, could result in an uncontrolled engine fire and damage to the airplane.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require removal from service of the main fuel pump and replacement with a part eligible for installation.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 265 engines installed on airplanes of U.S. registry. Although this AD provides two options for replacement of the main fuel pump with a new or overhauled part for compliance, the FAA predicts most operators will choose to replace with an overhauled part, which is the most cost-effective option. If choosing to replace with a new part, the cost of a new main fuel pump is estimated to be \$607,255.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace main fuel pump—overhauled part.	8 work-hours × \$85 per hour = \$680	\$24,657	\$25,337	\$6,714,305

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA-2026-4651; Project Identifier AD-2025-01669-E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 20, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) Model GENx-1B64, GENx-1B64/P1, GENx-1B64/P2, GENx-1B67, GENx-1B67/P1, GENx-1B67/P2, GENx-1B70, GENx-1B70/75/P1, GENx-1B70/75/P2, GENx-1B70/P1, GENx-1B70/P2, GENx-1B70C/P1, GENx-1B70C/P2, GENx-1B74/75/P1, GENx-1B74/75/P2, GENx-1B76/P2, GENx-1B76A/P2, GENx-2B67, GENx-2B67B, and GENx-2B67/P engines with a main fuel pump installed having a part number (P/N) identified in table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (C)—AFFECTED MAIN FUEL PUMPS

Part nomenclature	GE P/N	Eaton vendor identification No. (VIN)	Woodward VIN
Main Fuel Pump	2122M22P03	846400-1	1330-1018
Main Fuel Pump	2122M22P04	846400-2	1330-1048

(d) Subject

Joint Aircraft System Component (JASC) Code 7314, Engine Fuel Pump.

(e) Unsafe Condition

This AD was prompted by a report of a fuel leak from a worn main fuel pump inlet housing. The FAA is issuing this AD to prevent wear and subsequent fuel leak of certain main fuel pumps. The unsafe condition, if not addressed, could result in an uncontrolled engine fire and damage to the airplane.

(f) Compliance

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

(g) Definitions

For the purpose of this AD:

- (1) An "engine shop visit" is defined as the induction of an engine or module into the shop for maintenance.
- (2) A "part eligible for installation" is defined as the following, as applicable:
 - (i) A main fuel pump that does not have a part number identified in table 1 to paragraph (c) of this AD.

(ii) A main fuel pump that has a part number identified in table 1 to paragraph (c) of this AD that is a new part with no prior service history.

(iii) A main fuel pump that has a part number identified in table 1 to paragraph (c) of this AD that has been overhauled and confirmed to have all thrust bearing screws replaced in accordance with any revision of GE Service Bulletins GENx-1B SB73-0117 or GENx-2B SB73-0110.

(iv) A main fuel pump that has a part number identified in table 1 to paragraph (c) of this AD that has been overhauled after January 1, 2023, and confirmed to have all thrust bearing screws replaced.

(h) Required Actions

At the next engine shop visit after the effective date of this AD, remove from service any affected main fuel pump having a part number identified in table 1 to paragraph (c) of this AD that does not meet the definition of a part eligible for installation in paragraph (g)(2) of this AD, and replace with a part eligible for installation.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

(1) For more information about this AD, contact Itanza Young, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 482-6306; email: itanza.n.young@faa.gov.

(2) For material identified in this AD that is not incorporated by reference, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552-3272; email: aviation.fleetsupport@ge.com; website: geaviation.com/support.

(k) Material Incorporated by Reference

None.

Issued on May 29, 2026.

Brian Knaup,

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

[FR Doc. 2026-11085 Filed 6-2-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-117298-21]

RIN 1545-BQ20

Guidance on Tax-Exempt Refunding Bonds; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document contains proposed regulations that would update

certain arbitrage rules and definitions applicable to tax-exempt and other tax-advantaged bonds by clarifying the time and manner for requesting refunds of overpayment of rebate to the United States, the special transition rule for transferred proceeds, the limitation on allocations to expenditures, and the IRS address for filing defeasance notices. These proposed regulations would also revise the provision addressing certain perpetual State guarantee funds, the definition of tax-exempt bond, and the definition of refunding issue. The proposed regulations would affect issuers of tax-advantaged bonds.

DATES: The hearing on these proposed regulations has been scheduled for Thursday, July 30, 2026, at 10:00 a.m. Eastern Time (ET). The IRS must receive speakers' outlines of the topics to be discussed at the hearing by June 15, 2026. If no outlines are received by June 15, 2026, the hearing will be cancelled.

ADDRESSES: The hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the hearing by telephone.

Send an outline of topic submission electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-117298-21). Send paper submissions to CC:PA:01:PR, (REG-117298-21), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Brian Choi of the Office of Associate Chief Counsel (Financial Institutions and Products), (202) 317-3154 (not a toll-free number); concerning submissions of requests to testify, attend, or to be placed on the building access list to attend the hearing, the Publications and Regulations Section at (202) 317-6901 (not toll-free number) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION: The subject of the hearing is the notice of proposed rulemaking (REG-117298-21) published in the **Federal Register** on Thursday, March 12, 2026 (91 FR 12118).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Individuals who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by June 15, 2026. A period of 10 minutes will be allotted to each testimony.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing and via the Federal eRulemaking Portal (www.regulations.gov) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by June 15, 2026, the hearing will be cancelled. If the hearing is cancelled, a notice of cancellation of the hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the hearing must send an email to publichearings@irs.gov to have their name added to the building access list. The subject line of the email must contain the regulation number REG-117298-21 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-117298-21.

Individuals who want to testify by telephone at the hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-117298-21 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-117298-21.

Individuals who want to attend the hearing in person without testifying must also send an email to publichearings@irs.gov to have their name added to the building access list. The subject line of the email must contain the regulation number REG-117298-21 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-117298-21. Requests to attend the hearing must be received by July 28, 2026, 5:00 p.m. ET.

Individuals who want to attend the hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-117298-21 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-117298-21. Requests to attend the

hearing must be received by July 28, 2026, 5:00 p.m. ET.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by July 25, 2026, 5:00 p.m. ET.

Any questions regarding speaking at or attending a hearing may also be emailed to publichearings@irs.gov.

Oluwafunmilayo Taylor,

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

[FR Doc. 2026-11102 Filed 6-2-26; 8:45 am]

BILLING CODE 4831-GV-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA-2025-0006]

RIN 1218-AD48

Amending the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators

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

ACTION: Proposed rule; notice of reopening of the rulemaking record.

SUMMARY: OSHA is providing an additional comment period to allow interested persons to comment on OSHA's proposal to remove some medical evaluation requirements from the Respiratory Protection Rule, 29 CFR 1910.134, for certain types of respirators. This proposed change would only impact filtering facepiece respirators and loose-fitting powered air-purifying respirators. Following consideration of the rulemaking by OSHA's Advisory Committee on Construction Safety and Health (ACCSH), OSHA is re-opening the record for this rulemaking to provide an additional 30 days for public comment.

DATES: The comment period for the proposed rule published July 1, 2025 at 90 FR 28463 is reopened. Written comments must be submitted on or before July 6, 2026.

ADDRESSES:

Written comments: You may submit comments and attachments, identified

by Docket No. OSHA-2025-0006, electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2025-0006). When uploading multiple attachments to www.regulations.gov, please number all of your attachments because www.regulations.gov will not automatically number the attachments. This will be very useful in identifying all attachments. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on www.regulations.gov.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at www.regulations.gov. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: The docket for this rulemaking (Docket No. OSHA-2025-0006) is available at www.regulations.gov, the Federal eRulemaking Portal. Additional materials and information related to OSHA's consultation with the Advisory Committee on Construction Safety and Health (ACCSH) will be available at <https://www.osha.gov/advisorycommittee/accsch/minutes>. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) may not be publicly available to read or download through that website. All documents submitted to www.regulations.gov, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY number: (877) 889-5627) for assistance in locating docket submissions.

Copies of this Federal Register Notice: Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, is available at OSHA's web page at <http://www.osha.gov>.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693-1999; email: oshacomms@dol.gov.

For general information and technical inquiries: Contact Andrew Levinson, Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693-1950; email: osha.dsg@dol.gov.

SUPPLEMENTARY INFORMATION: On July 1, 2025, OSHA published a proposal to update the Respiratory Protection Standard, 29 CFR 1910.134, by amending the medical evaluation requirements specified in the medical evaluation paragraph (e) where an employee is required to wear either a filtering facepiece respirator (FFR) or loose-fitting powered air-purifying respirator (PAPR). The proposal and a full explanation of the proposed change are provided in the Notice of Proposed Rulemaking, 90 FR 28463. Using a respirator may place a physiological burden on employees that varies with the job and workplace conditions in which the respirator is used and the medical status of the employee. OSHA has preliminarily determined this burden differs based on the type of respirator worn and therefore proposes an amendment to the medical evaluation requirements of the standard for FFRs and loose-fitting PAPRs (90 FR 28463). The comment period was scheduled to end on September 2, 2025, but was subsequently extended an additional 60 days to November 1, 2025, in response to requests from the public (90 FR 40541, 08/20/2025).

At the time of publication of the proposal, OSHA was in the process of appointing members to the Advisory Committee on Construction Safety and Health (ACCSH). OSHA stated in the proposal that it would present this proposed rule to ACCSH once that process was complete and would place the Committee's recommendations on the OSHA website and in the docket for this proposed rule to allow the public to provide comments on those recommendations. On March 31, 2026, OSHA consulted with ACCSH on this proposed rule.

On March 31 and April 1, 2026 the Committee members discussed differing views of the proposal, and on April 1 the Committee approved the following recommendation by a vote of five to four: "ACCSH recommends that OSHA not proceed with the proposal to remove the medical evaluation requirements and continue to look for best practices and provide those to employers." OSHA

is now reopening the rulemaking record to allow for public comment for an additional 30 days. To read or download the ACCSH recommendations, comments, and other materials submitted in the docket, go to Docket No. OSHA–2025–0006 at www.regulations.gov. Additional materials and information related to OSHA's consultation with ACCSH will be available at <https://www.osha.gov/advisorycommittee/acssh/minutes>.

Authority and Signature

This document was prepared under the direction of David Keeling, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under the authority of sections 4 and 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653 and 655), section 41 of the Longshore and Harbor Worker's Compensation Act (section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act); section 41 of the Longshore and Harbor Worker's Compensation Act (40 U.S.C. 3704); section 41 of the Longshore and Harbor Worker's Compensation Act (3 U.S.C. 941), 29 CFR part 1911, and Secretary of Labor's Order No. 07–2025 (90 FR 27878).

Dated: May 21, 2026.

David Keeling,

Assistant Secretary of Labor for Occupational Safety and Health

[FR Doc. 2026–11093 Filed 6–2–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[Docket Nos. OSHA–2025–0006; OSHA–2025–0009; OSHA–2025–0011; OSHA–2025–0012; OSHA–2025–0013; OSHA–2025–0014; OSHA–2025–0015; OSHA–2025–0016; OSHA–2025–0017; OSHA–2025–0018; OSHA–2025–0019; OSHA–2025–0020; OSHA–2025–0021; OSHA–2025–0022; OSHA–2025–0023; OSHA–2025–0024; OSHA–2025–0025; OSHA–2025–0026; and OSHA–2025–0072]

RINs 1218–AD54; 1218–AD55; 1218–AD56; 1218–AD57; 1218–AD58; 1218–AD59; 1218–AD60; 1218–AD61; 1218–AD62; 1218–AD63; 1218–AD64; 1218–AD65; 1218–AD66; 1218–AD67; 1218–AD68; 1218–AD69; 1218–AD48; 1218–AD50; and 1218–AD73

1,2-dibromo-3-chloropropane; 1, 3-Butadiene; 13 Carcinogens (4-Nitrobiphenyl, etc.); Acrylonitrile; Asbestos; Benzene; Cadmium; Coke Oven Emissions; Cotton Dust; Ethylene Oxide; Formaldehyde; Inorganic Arsenic; Lead; Methylene Chloride; Methylenedianiline; Vinyl Chloride; Amending the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators; Safety Color Code for Marking Physical Hazards; Textiles; Sawmills; Safety Color Code for Marking Physical Hazards for Shipyard Employment; and Walking-Working Surfaces

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

ACTION: Proposed rule; Notice of informal hearings.

SUMMARY: OSHA is scheduling a series of informal public hearings on the above-listed proposed rules. The public hearings will begin on August 19, 2026. All of the proposed rules listed in this notice were published in the **Federal Register** on July 1, 2025, except for the Walking-Working Surfaces proposal, which was published on April 6, 2026.

DATES: *Informal public hearings:* The hearings will be held virtually and will begin August 19, 2026, at 9:30 a.m. The hearings will continue on subsequent weekdays. The number of hearings days will be determined by OSHA at a later date and will likely depend on the number of people who wish to testify. Additional information on how to access the informal hearings will be posted at <https://www.osha.gov/deregulatory-rulemaking>.

NOITA submission deadline: To testify, provide documentary evidence,

or question other witnesses at the hearing, interested persons must electronically submit their Notice of Intention to Appear (NOITA) on or before July 6, 2026.

Deadline for hearing materials: In addition, those who request more than 10 minutes for their presentation at the informal hearing and those who intend to submit documentary evidence at the hearing must submit the full text of their testimony, as well as a copy of any documentary evidence, no later than August 5, 2026.

ADDRESSES:

Notice of Intention To Appear (NOITA): A NOITA must be submitted electronically at <https://www.osha.gov/deregulatory-rulemaking>. Follow the instructions online for making electronic submissions. Interested persons will have the ability to identify which of the rulemakings involved in these hearings they wish to provide testimony on. Those who file NOITAs must also submit electronic copies of all documents that they intend to use or reference during their testimony. OSHA will provide instructions for submitting testimony and documentary evidence to those who file a NOITA.

Instructions: All submissions must include the agency's name and the docket numbers for the relevant rulemakings. All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments or other material in the dockets, locate the docket number and docket link associated with the rulemaking(s) of interest on <https://www.osha.gov/deregulatory-rulemaking>, and use that link to go to www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number

plus a unique four or five-digit code. OSHA identified supporting information in these NPRMs by author name and publication year, when appropriate. This information can be used to search for a supporting document in the docket at www.regulations.gov. Contact the OSHA Docket Office at 202–693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

For press inquiries, ASL interpretation, and language translation service requests: Contact Mr. Frank Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1999; email: oshacomms@dol.gov.

For general information and technical inquiries: Contact Andrew Levinson, Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1950; email: osha.dsg@dol.gov.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) published a series of deregulatory proposed rulemakings in the **Federal Register** on July 1, 2025, reflecting OSHA's commitment to modernizing workplace safety standards, addressing outdated regulations, and enhancing the flexibility of compliance strategies across multiple industries. These efforts are aligned with Executive Order 14192, "Unleashing Prosperity Through Deregulation," which directs agencies to reduce compliance costs and eliminate unnecessary regulatory burdens.

Changes to Respiratory Protection Requirements for 16 Different Chemical Substances

Sixteen of the rules that OSHA proposed are related to respiratory protection requirements for different chemical substances (1,2-dibromo-3-chloropropane; 1, 3-Butadiene; 13 Carcinogens (4-Nitrobiphenyl, etc.); Acrylonitrile; Asbestos; Benzene; Cadmium; Coke Oven Emissions; Cotton Dust; Ethylene Oxide; Formaldehyde; Inorganic Arsenic; Lead; Methylene Chloride; Methylenedianiline; and Vinyl Chloride). The intent of each proposal is to reduce compliance burdens, allow for the use of more up-to-date technology, and/or better align the rules with the general Respiratory Protection standard (29 CFR 1910.134) to improve the comprehensibility of the requirements for respiratory protection programs for each chemical (90 FR

28263–28282; 90 FR 28286–28336; 90 FR 28349–28358).

Respiratory Protection: Medical Evaluations

OSHA also published a proposal to update the Respiratory Protection Standard (29 CFR 1910.134) by removing the medical evaluation requirements specified in the paragraph (e) for employees required to wear either a filtering facepiece respirator (FFR) or loose-fitting powered air-purifying respirator (PAPR) (90 FR 28463).

Safety Color Code for Marking Physical Hazards

OSHA also published a proposal to remove its Safety Color Code for Marking Physical Hazards standard, 29 CFR 1910.144, as well as paragraph (c)(8) of OSHA's Textiles standard, 29 CFR 1910.262; paragraph (c)(11) of OSHA's Sawmills Standard, 29 CFR 1910.265; and OSHA's Safety Color Code for Marking Physical Hazards for Shipyard Employment Standard, 29 CFR 1915.90, which require compliance with 29 CFR 1910.144. These standards require that red be the basic color for the identification of danger and stop, and that yellow be the basic color for designating caution and for marking physical hazards such as striking against, stumbling, falling, tripping, and caught-in-between. In the proposal, OSHA stated, among other things, that these standards are designed to address hazards that are sufficiently addressed by other Federal, State, and local requirements (state and local building and fire codes, OSHA's Specifications for Accident Prevention Signs and Tags standard (29 CFR 1910.145)). OSHA also stated that relying solely on color to identify hazards is not effective for individuals with color vision deficiencies (90 FR 28282).

Walking-Working Surfaces—Fixed Ladders

Finally, on April 6, 2026, OSHA published a proposed rule intended to provide greater compliance flexibility for employers subject to the requirements in OSHA's Walking-Working Surfaces standard (29 CFR, Subpart D). OSHA proposed to remove a provision that sets a deadline (November 18, 2036) for the installation of personal fall arrest systems or ladder safety systems on all fixed ladders that extend more than 24 feet above a lower level. OSHA anticipates this change will allow employers to update their ladders when the ladders reach the end of their service lives, significantly reducing costs and offering greater flexibility (91 FR 17165).

Requests for Hearings

Several commenters requested public hearings on a number of the rulemakings described above (e.g., OSHA–2025–0006–0318, OSHA–2025–0009–0006, OSHA–2025–0013–0003, OSHA–2025–0019–0003). OSHA agrees to hold a series of fully virtual public hearings, which will begin August 19, 2026, and continue on subsequent weekdays. Witnesses are welcome to testify about any topics, issues, or concerns they have with the proposed rules.

I. Informal Public Hearing—Purpose, Rules and Procedures

OSHA invites interested persons to participate in these rulemakings by providing oral testimony and documentary evidence at the informal public hearings to provide the agency with the best available evidence to use in developing these final rules (see 29 CFR 1911.15(a) and 5 U.S.C. 553(c)). The public hearings will be virtual to provide the opportunity for more stakeholders from across the country to participate in and/or observe the hearing without the financial and logistical burden of traveling to Washington, DC to attend in person.

An administrative law judge (ALJ) will preside over the hearing and will resolve any procedural matters relating to the hearing. Although the presiding officers of the hearings are ALJs and questioning of witnesses is allowed on crucial issues, the proceedings are largely informal and essentially legislative in purpose. Therefore, the hearings provide interested persons with an opportunity to make oral presentations in the absence of rigid procedures that could impede or protract the rulemaking process. The hearings are not adjudicative proceedings subject to the Federal Rules of Evidence. Instead, these are informal administrative proceedings convened for the purpose of gathering and clarifying information. Accordingly, questions of relevance, procedure, and participation generally will be resolved in favor of developing a clear, accurate, and complete record.

Although each ALJ presiding over the hearings makes no decision or recommendation on the merits of these proposals, the ALJ has the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure a full and fair hearing, the ALJ has the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters

pertinent to the issues the proposed rule raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit the time for such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments, and arguments from those who participated in the hearing (29 CFR 1911.16). In addition, pursuant to 29 CFR 1911.4, the Assistant Secretary may, on reasonable notice, issue additional or alternative procedures to expedite the proceedings, to provide greater procedural protections to interested persons, or to further any other good cause consistent with applicable law.

At the close of the hearings, there will be a post-hearing comment period during which those persons who submitted a NOITA may submit final briefs, arguments, summations, and additional data and information to OSHA.

II. Notice of Intention To Appear at the Hearing

Interested persons who intend to testify, provide documentary evidence, or question other witnesses at the hearings must electronically submit their NOITA via <https://www.osha.gov/deregulatory-rulemaking> on or before July 6, 2026 and in accordance with the instructions in the **ADDRESSES** section earlier in this document. The NOITA must provide the following information:

(1) Name, address, email address, and telephone number of each individual who will give oral testimony;

(2) Name of the establishment or organization each individual represents, if any;

(3) Occupational title and position of each individual testifying; and

(4) A brief statement of the position each individual will take with respect to the issues raised by each proposed rule the individual intends to comment on.

The agency will consider the information in each submission when setting the schedule for the hearings. Before the hearings, OSHA will make the hearing procedures and schedule for the hearings available at <https://www.osha.gov/deregulatory-rulemaking> and in each docket. OSHA emphasizes that the hearings are open to the public; however, only individuals who file a NOITA may testify at any hearing or question witnesses.

Witnesses will be asked to specify the approximate amount of time requested for each individual or group's testimony (5, 10, 15, or 20 minutes). Individuals or groups who request more than 10 minutes to present their oral testimony

at the hearings, or who will submit documentary evidence at the hearings, must submit the full text of their testimony and all documentary evidence no later than August 5, 2026. OSHA will provide instructions for submitting testimony and documentary evidence to those who file a NOITA. The agency will review each submission. If OSHA believes the requested time is excessive, the agency will allocate an appropriate amount of time for the presentation. Any participant who fails to comply substantially with these procedural requirements may be limited to a 5-minute presentation. Before the hearings, OSHA will notify participants of the time the agency will allow for their presentation and, if less than requested, the reasons for its decision.

III. Certification of the Hearing Record and Agency Final Determination

Following the close of the hearings and the post-hearings comment period, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all written comments and oral testimony as well as documentary evidence received during the proceedings. The ALJ, however, will not make or recommend any decisions as to the content of the final standards. Following certification of the record, OSHA will review all of the evidence received into each record and will issue final rules based on each record as a whole.

Authority and Signature

This document was prepared under the direction of David Keeling, Assistant Secretary of Labor for Occupational Safety and Health. 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, and 657), 5 U.S.C. 553, Secretary of Labor's Order No. 07-2025 (90 FR 27878), and 29 CFR part 1911.

Dated: May 26, 2026.

David Keeling,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026-11126 Filed 6-2-26; 8:45 am]

BILLING CODE 4510-26-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 304

[EPA-HQ-OLEM-2026-2047; FRL-13112-01-OLEM]

RIN 2050-AH48

Rescinding the Regulations for Arbitration Requirements and Procedures for Small Superfund Cost Recovery Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to rescind regulations establishing arbitration procedures for small cost recovery claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is proposing this rescission to simplify the body of Federal regulations.

DATES: Comments must be received on or before August 3, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2026-2047, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management, Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery or 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. to 4:30 p.m., Monday-Friday (except Federal Holidays).

FOR FURTHER INFORMATION CONTACT: Scott Mansfield, Office of Land and Emergency Management, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 566-0174, email address: mansfield.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2026-2047, 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.

II. General Information

A. Does this action apply to me?

This action may affect individuals, corporations, or municipalities that are currently engaged in Small Superfund Cost Recovery Claims arbitration proceedings or may engage in those proceedings in the future.

B. What action is the agency taking?

Environmental Protection Agency (EPA) is proposing to rescind all of the regulations found in part 304 ("Arbitration Procedures for Small Superfund Cost Recovery Claims") of subchapter J ("Superfund, Emergency Planning, and Community Right-to-Know Programs") of chapter I of title 40 of the CFR. Section 107(a) of CERCLA establishes liability for certain response costs associated with hazardous substances and the release thereof, *see* 42 U.S.C. 9607, and section 122(h)(2) of CERCLA establishes that arbitration may be used as a method of settling such claims brought by the United States where the total response costs do not exceed \$500,000 (excluding interest), *see* 42 U.S.C. 9622(h)(2). To that end, section 122(h)(2) of CERCLA provides that department and agency heads "may establish and publish regulations for the use of arbitration or settlement" "[a]fter consultation with the Attorney General." *Id.* 40 CFR part 304 contains the regulations that EPA promulgated to establish procedures for the arbitration of section 107(a) cost recovery claims brought by EPA. *See* 40 CFR 304.10; 40 CFR 304.11. For example, part 304 establishes specific processes for, among

other things, the referral of claims to arbitration, *see* 40 CFR 304.21; the appointment of an arbitrator, *see* 40 CFR 304.22; and intervention in and withdrawal from arbitration, *see* 40 CFR 304.24. Part 304 also sets forth specific requirements and procedures related to arbitral pleadings, pre-hearing conferences, hearings, and decisions. *See* 40 CFR 304.30–304.33. EPA now finds part 304 to be unnecessary.

Arbitration was intended to be an alternative dispute resolution technique for reaching settlements with individuals, corporations, or municipalities in appropriate small cost recovery cases. However EPA is not aware of the last time the process was used or if it has been used at all. In addition to the questionable utility of the alternative process given its lack of use, if that process were ever used in the future, the Agency could be in the position of using an unpracticed method, which may require shifting and/or reallocating limited agency resources. In the original proposed and final rulemakings for part 304, EPA explained that "arbitration is an alternative dispute resolution technique that should provide a quicker and less costly method or resolution than traditional litigation or negotiation." 53 FR 29428, 54 FR 23179. The absence of parties that have used arbitration pursuant to part 304 could indicate that it is not as quick and simple of a process as we originally thought. EPA is soliciting comments on this interpretation. Additionally, no statute requires EPA to establish an extensive framework governing arbitration; instead, EPA exercised its discretionary authority and opted to promulgate such regulations as permitted by section 122(h)(2) of CERCLA. *See* 42 U.S.C. 9622(h)(2). Moreover, part 304 introduces a significant amount of complexity to the body of Federal regulations, as it establishes specific and somewhat complicated requirements and processes for the arbitration of a particular subset of section 107(a) cost recovery claims brought by EPA.

EPA is therefore proposing to rescind part 304 in its entirety to simplify the body of Federal regulations. EPA seeks comments on this proposed action.

C. What is the agency's authority for taking this action?

The authority to propose this rule is found in sections 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9607 and 9622).

D. What are the costs and benefits of this action?

By eliminating an unused method of dispute resolution and removing unnecessary regulatory text, this action will reduce complexity for regulated entities engaging with the federal government.

III. 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 not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. The proposed rule is expected to provide burden reduction by simplifying the body of Federal regulations.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

D. The 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 has no net burden on the small entities subject to the rule. This proposed rule is a deregulatory action and does not add any additional burden. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action will impose no

enforceable duty on any state, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because 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. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks 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. This action is proposing to rescind regulations establishing arbitration procedures for small cost recovery claims. There are no children’s health considerations for this action.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards.

List of Subjects in 40 CFR Part 304

Environmental protection, Claims, Superfund.

Lee Zeldin,
Administrator.

PART 304—[REMOVED AND RESERVED]

■ For the reasons set forth in the preamble, and under the authority of 42 U.S.C. 9607(a) and 9622 (h)(2), Executive Order No. 12580, 52 FR 2923 (January 29, 1987), EPA proposes to remove and reserve 40 CFR part 304.

[FR Doc. 2026–11052 Filed 6–2–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 305

[EPA–HQ–OLEM–2026–2048; FRL–13113–01–OLEM]

RIN 2050–AH49

Amending the Administrative Hearing Procedures for Claims Against the Hazardous Substance Superfund Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to amend the administrative hearing procedures for claims brought against the Hazardous Substance Superfund pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

DATES: Comments must be received on or before August 3, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2026–2048, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management, Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery or 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. to 4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including 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.

FOR FURTHER INFORMATION CONTACT: Scott Mansfield, Office of Land and Emergency Management, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone number: (202) 566–0174, email address: mansfield.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2026–2048, 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.

II. General Information

A. Does this action apply to me?

This action affects persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan.

B. What action is the agency taking?

EPA is proposing to make one revision to 40 CFR part 305, which are the regulations Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Hearing Procedures for Claims Against the Superfund. Sections 111(a)(2) and 122(b)(1) of CERCLA authorize EPA to, among other things, use the Hazardous Substance Superfund to reimburse certain persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. In this action, EPA is proposing to amend § 305.31(a). Upon further evaluation, and for the reasons explained herein, EPA has determined that this revision is appropriate. 40 CFR 305.31(a)

Section 305.31 sets forth the rules of evidence for the relevant administrative hearings. It provides, as general rule, that “The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value . . .” 40 CFR 305.31(a). Notably, the exclusion of evidence that is simply “of little probative value” does not align with the Federal Rules of Evidence. EPA determines that excluding such evidence is unwarranted, particularly because the exclusion of evidence that is “irrelevant, immaterial, unduly repetitious, or otherwise unreliable” thoroughly addresses concerns related to relevancy. EPA is proposing to remove from § 305.31(a) the language excluding evidence that is “of little probative value” to simplify the body of Federal regulations and to enable the admission of evidence that is relevant and otherwise acceptable but also “of little probative value” when considered by itself.

In sum, EPA is proposing to amend § 305.31 to simplify the body of Federal regulations. EPA is seeking comments on these proposed changes. In this proposal, EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any other provisions of the existing Part 305 regulations or other regulations governing claims asserted against the Hazardous Substance Superfund beyond those specifically identified in this proposal. EPA will not respond to comments submitted on any issues other than those specifically identified in this proposal, and such comments will not be considered part of the rulemaking record.

C. What is the agency's authority for taking this action?

The authority to propose this rule is found in sections 111, 112 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9611, 9612, and 9622).

D. What are the incremental costs and benefits of this action?

By removing unnecessary regulatory text this action will reduce the complexity of the body of the Federal regulations, which should result in an overall general reduction in burden for regulated entities using the Code of Federal Regulations (CFR).

III. 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 not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. The proposed rule is expected to provide burden reduction by simplifying the body of Federal regulations.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

D. The 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 has no net burden on the small entities subject to the rule. This action will reduce the regulatory burden on regulated entities associated with these procedures. We have

therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because 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. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks 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. This action is proposing to amend the administrative hearing procedures for claims brought against the Hazardous Substance Superfund. There are no children’s health considerations for this action.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards.

List of Subjects in 40 CFR Part 305

Environmental protection, Cost recovery, Hazardous substances, Liability, Superfund.

Lee Zeldin,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend part 305 of chapter I, subchapter J, of title 40 of the Code of Federal Regulations as follows:

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, and LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPERFUND

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Subpart D—Hearing Procedure

■ 2. In § 305.31, revise paragraph (a) to read as follows:

§ 305.31 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable except that evidence which would be excluded in the Federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C. appendix) is not admissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall

follow the provisions regarding confidential business information of 40 CFR part 2, subpart B for CERCLA. The commercial or trade secret status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental final order to address questions of law or fact which arise out of that portion of the evidence which is confidential or which includes trade secrets. For the purpose of recording the hearing, the court reporter shall be considered “a person under contract or subcontract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act” pursuant to 40 CFR 2.301(h)(2); unless the affected business, as defined in 40 CFR 2.201(d), agrees to some other procedures approved by the Presiding Officer.

* * * * *

[FR Doc. 2026–11053 Filed 6–2–26; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 91, No. 106

Wednesday, June 3, 2026

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public business meeting via Zoom. The purpose of the meeting is to continue briefing planning on the Committee's selected civil rights topic on the school to prison pipeline in Georgia.

DATES: Wednesday, June 10, 2026, from 11:30 a.m. to 12:30 p.m. Eastern Time

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_KDJ5Elz3THy43g1qmn2Q.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 165 982 0073 #

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or (202) 809-9618.

SUPPLEMENTARY INFORMATION:

Agenda: <https://usccr.box.com/s/wtnxj5u4y21oothm5he9wwfdhhrk3uh> (navigate through the folders until you reach 'meeting records' and select pertinent year/meeting date. Note: a final meeting agenda will be available prior to the meeting date).

This Committee meeting is available to the public through the registration link above. Any interested members of the public may attend this meeting. An open comment period will be provided

to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting "CC" in the meeting platform. To request additional accommodations, please email mtrachtenberg@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be submitted via the following form: <https://wkf.ms/4wEILYL>. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809-9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via the file sharing website, <https://bit.ly/42t1cCA>. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at mtrachtenberg@usccr.gov.

Dated: June 1, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026-11106 Filed 6-2-26; 8:45 am]

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COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is for the Committee to plan their upcoming briefings as part of the Implementation Stage.

DATES: Monday, June 22, 2026, from 3:00 p.m.-4:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_G5Vwu6doRHCuCuQRT0xQxg.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll Free; Webinar ID: 165 790 0522#.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515-0204.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested members of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral comments as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting "CC" in the meeting platform. To request additional accommodations, please email csanders@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be submitted via the following form: <https://wkf.ms/4n7DKT3>. Persons who desire additional information may contact the

Regional Programs Coordination Unit at (434) 515-0204.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via the file sharing website, <https://usccr.box.com/s/uc7rr59hi2y8p1uapgemt6y1opr61zyv>. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at csanders@usccr.gov.

Agenda: Will be available at the following link in advance of the meeting date—<https://usccr.box.com/s/zchrq5hcu065wvtmw9tohnfq0h4oqsmn>.

Dated: June 1, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026-11107 Filed 6-2-26; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-286-2026]

Foreign-Trade Zone 266; Application for Subzone; Tekni-Plex Flexibles LLC (dba TekniPlex Healthcare); Madison, Wisconsin

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by Dane County, Wisconsin, grantee of FTZ 266, requesting subzone status for the facility of Tekni-Plex Flexibles LLC (dba TekniPlex Healthcare), located in Madison, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on June 1, 2026.

The proposed subzone (10.45 acres) is located at 6002 Femrite Dr., Madison, Wisconsin. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B-36-2026). The proposed subzone would be subject to the existing activation limit of FTZ 266.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive

Secretary and sent to: ftz@trade.gov. The closing period for their receipt is July 13, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through July 28, 2026.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Camille Evans at Camille.Evans@trade.gov.

Dated: June 1, 2026.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2026-11124 Filed 6-2-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-54-2026]

Foreign-Trade Zone (FTZ) 151, Notification of Proposed Production Activity; Callies Performance Products Inc; (Auto Parts); Fostoria, Ohio

Callies Performance Products Inc (Callies) submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Fostoria, Ohio within FTZ 151. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on May 27, 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: finished steel crankshafts, finished nodular iron crankshafts, and finished forged steel connecting rods (duty rates are 2.5%).

The proposed foreign-status materials/components include: steel crankshaft forgings, semi-finished steel crankshafts, nodular iron crankshaft castings, semi-finished nodular iron crankshafts, semi-finished steel connecting rod forgings, and tungsten heavy metal slugs (duty rate ranges from 2.5 to 2.8%).

The request indicates that certain materials/components are subject to duties under section 122 of the Trade Act of 1974 (Section 122), 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 122, section 232, 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 July 13, 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 Christopher Williams at Christopher.williams@trade.gov.

Dated: May 29, 2026.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2026-11123 Filed 6-2-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-819]

Prestressed Concrete Steel Wire Strand From Malaysia: Final Results of Antidumping Duty Administrative Review; 2023-2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Kiswire Sdn. Bhd. (Kiswire), Southern PC Steel Sdn. Bhd (Southern PC Steel), and Wei Dat Steel Wire Sdn. Bhd. (Wei Dat) did not make sales of prestressed concrete steel wire strand (PC strand) from Malaysia in the United States at prices below normal value (NV) during the period of review. The period of review (POR) is June 1, 2023, through May 31, 2024.

DATES: Applicable June 3, 2026.

FOR FURTHER INFORMATION CONTACT: Monica Gillis or Peter Shaw, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6384 or (202) 482-0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2025, Commerce published in the **Federal Register** the *Preliminary Results* of this administrative review.¹

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.² Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.³ In March 2026, Commerce conducted verification of Kiswire’s and Wei Dat’s questionnaire responses.⁴ On March 9, 2026, Commerce extended the deadline for the final results.⁵ Accordingly, the deadline for these final results is now May 29, 2026.

For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁶ The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/frnotices>.

¹ See *Prestressed Concrete Steel Wire Strand from Malaysia: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2023–2024*, 90 FR 48037 (October 3, 2025) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

³ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁴ See Memoranda, “Verification of the Sales Responses of Kiswire Sdn. Bhd.”; and “Verification of the Sales Responses of Wei Dat Steel Wire Sdn Bhd,” both dated April 30, 2026.

⁵ See Memorandum, “Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated March 9, 2026.

⁶ See Memorandum, “Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Prestressed Concrete Steel Wire Strand from Malaysia; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁷

The product covered by the scope of the *Order* is PC strand from Malaysia. For a full description of the scope, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain changes to the preliminary margin calculations for Kiswire and Wei Dat. For a detailed discussion of the changes since the *Preliminary Results*, see the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce’s regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” Where the dumping margin for individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use “any reasonable method to establish the

estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”

In this review, we calculated weighted-average dumping margins for Kiswire and Wei Dat that are zero and we did not calculate any margins which are not zero, *de minimis*, determined entirely on the basis of facts available. Therefore, consistent with section 735(c)(5)(B) of the Act, we are applying to Southern PC Steel, the company not selected for individual examination in this review, a margin of 0.00 percent.

Final Results of Review

As a result of this review, we determine the following weighted-average dumping margins exist for the period June 1, 2023, through May 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Kiswire Sdn. Bhd	0.00
Wei Dat Steel Wire Sdn. Bhd	0.00
Southern PC Steel Sdn. Bhd	0.00

Disclosure

Commerce intends to disclose the calculations performed for the final results of this review to parties in this proceeding within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the *Final Register*, in accordance with 19 CFR 351.224(b).⁸

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because Kiswire and Wei Dat’s weighted-average dumping margins are zero percent, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

⁷ See *Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine: Antidumping Duty Orders*, 86 FR 29998 (June 4, 2021) (*Order*).

⁸ See 19 CFR 351.224(b).

For entries of subject merchandise during the POR produced by Kiswire and Wei Dat for which these companies did not know the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁹ For Southern PC Steel, we will assign an assessment rate based on the methodology described in the “Rates for Non-Examined Companies” section, above.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for the companies listed in these final results will be equal to the weighted-average dumping margin established in these final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or a completed prior segment of this proceeding but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.13 percent, the all-others rate established in the less-than-fair-value investigation.¹⁰ These cash deposit requirements, when imposed, shall remain in effect until further notice.

⁹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁰ See *Order*, 86 FR at 30000.

Notification to Importers

This 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 the POR. 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.

Administrative Protective Order (APO)

This notice serves as the only 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). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: May 29, 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.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Particular Market Situation
- V. Changes Since the *Preliminary Results*
- VI. Discussion of the Issues

Comment 1: Whether Commerce Should Base Wei Dat's U.S. Bank Charges on Adverse Facts Available (AFA)

Comment 2: Whether Commerce Should Base Wei Dat's Home Market Credit Expenses on AFA

Comment 3: Whether Commerce Should Base Wei Dat's U.S. Brokerage Expenses on AFA

Comment 4: Whether Commerce Should Revise Wei Dat's U.S. Packing Expenses

VII. Recommendation

[FR Doc. 2026–11120 Filed 6–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–120]

Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from The People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain large vertical shaft engines between 225cc and 999cc, and parts thereof (vertical shaft engines) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable June 3, 2026.

FOR FURTHER INFORMATION CONTACT: David De Falco, 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) 482–2178.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2021, Commerce published the CVD order on vertical shaft engines from China.¹ On February 2, 2026, Commerce published the notice of initiation of the first sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c).²

On February 17, 2026, Commerce received a notice of intent to participate in this review from Briggs & Stratton, LLC (Briggs & Stratton)³ and Discovery Energy, LLC (Discovery)⁴ (collectively,

¹ See *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*, 86 FR 12619 (March 4, 2021) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 91 FR 4499 (February 2, 2026).

³ See Briggs & Stratton's Letter, “Five-Year (“Sunset”) Review of the Antidumping and Countervailing Duty Orders on Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Domestic Industry's Notice of Intent to Participate,” dated February 17, 2026.

⁴ See Discovery's Letter, “Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts

Continued

the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claims interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as producers of the domestic like product.⁵

On March 4, 2026, Commerce received an adequate substantive response from the domestic interested parties, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁶ Commerce did not receive a substantive response from either the Government of China or a respondent interested party to this proceeding. On March 27, 2026, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁷ As a result,

Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The products covered by the *Order* are vertical shaft engines from China. For a full description of the scope of the *Order*, see the Issues and Decisions Memorandum.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is contained in the Issues and Decision Memorandum.⁹ A list of the topics discussed in the Issues and Decision

Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov>. In addition, complete versions of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/frnotices>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate (percent <i>ad valorem</i>)
Loncin Motor Co	18.96
Chongqing Zongshen General Power Machine Co	20.38
All Others	19.85

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders 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 these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: May 29, 2026.
Scot Fullerton,
Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 - 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - 2. Net Countervailable Subsidy Rates Likely to Prevail
 - 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2026–11119 Filed 6–2–26; 8:45 am]
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DEPARTMENT OF COMMERCE
International Trade Administration
[A–520–807]
Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.
SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value (NV) during the period of review (POR), December 1, 2023, through November 30, 2024. Interested parties are invited to comment on these preliminary results of review.
DATES: Applicable June 3, 2026.
FOR FURTHER INFORMATION CONTACT: Rebecca Janz, AD/CVD Operations,

Thereof from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated February 17, 2026.
⁵ *Id.* at 2.
⁶ See Domestic Interested Parties' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of

China: Substantive Response to Notice of Initiation," dated March 4, 2026.
⁷ See Commerce's Letter, "Sunset Reviews Initiated February 2, 2026," dated March 27, 2026.
⁸ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Certain Large Vertical Shaft Engines Between 225cc

and 999cc, and Parts Thereof from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).
⁹ *Id.*

Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2972.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2025, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE).¹ On February 25, 2025, Commerce selected Conares Metal Supply Limited (Conares) and THL Tube and Pipe Industries LLC; KHK Scaffolding and Formwork LLC; and Universal Tube and Pipe Industries FZE (collectively, Universal) as the mandatory respondents in this review.²

On December 9, 2024, Commerce tolled deadlines for all administrative

reviews by 90 days.³ Additionally, due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days,⁴ and, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁵ On January 22, 2026, we extended the preliminary results of this review to no later than May 29, 2026.⁶

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁷ A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/frnotices>.

Scope of the Order

The merchandise subject to the *Order* is CWP from the UAE. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with

section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rates for the Non-Individually Examined Companies

The Act and Commerce's regulations do not address the establishment of a rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review.

Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis* (i.e., less than 0.5 percent), or determined entirely on the basis of facts available. Where the weighted-average dumping margin for each of the individually examined respondents is zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In this administrative review, we preliminarily calculated weighted-average dumping margins for the mandatory respondents, Conares and Universal, that are not zero, *de minimis*, or based entirely on facts otherwise available. Accordingly, we are preliminarily assigning to the companies under review that were not selected for individual examination a weighted-average dumping margin equal to the weighted average of the estimated weighted-average dumping margins calculated for Conares and Universal, weighted by the mandatory

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 8187 (January 27, 2025) (*Initiation Notice*); see also *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders*, 81 FR 91906 (December 19, 2016) (*Order*). In the *Initiation Notice*, we stated that we initiated a review of Tiger Steel Industries LLC (Tiger Steel). However, Commerce previously determined that TSI Metal Industries L.L.C. is the successor-in-interest to Tiger Steel; thus, Tiger Steel is not a separate company subject to this review. See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 FR 41112 at n.3 (July 11, 2022).

² See Memorandum, "Respondent Selection," dated February 25, 2025. Commerce previously determined that Universal is a single entity consisting of the following three producers/exporters of subject merchandise: Universal Tube and Plastic Industries, Ltd.; KHK Scaffolding and Formwork LLC; and Universal Tube and Pipe Industries LLC. See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016), and accompanying Issues and Decision Memorandum. Additionally, we previously determined that THL Tube and Pipe Industries LLC is the successor-in-interest to Universal Tube and Pipe Industries LLC. See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 84 FR 44845 (August 27, 2019). During the POR, we further determined that Universal Tube and Pipe Industries FZE is the successor-in-interest to Universal Tube and Plastic Industries, Ltd. See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Changed Circumstances Review*, 89 FR 76087 (September 17, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁴ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁵ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁶ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 22, 2026.

⁷ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from United Arab Emirates; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

respondents' publicly ranged total sales values, consistent with the guidance in section 735(c)(5)(A) of the Act.⁸

Preliminary Results of Review

As a result of this review, we preliminarily determine the following

estimated weighted-average dumping margins exist for the period December 1, 2023, through November 30, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
Conares Metal Supply Limited	3.15
THL Tube and Pipe Industries LLC; KHK Scaffolding and Formwork LLC; Universal Tube and Pipe Industries FZE	6.16
Ajmal Steel Tubes & Pipes Ind. L.L.C.-Branch-1; Ajmal Steel Tubes & Pipes Ind. L.L.C	5.50
K.D. Industries Inc	5.50
TSI Metal Industries L.L.C	5.50

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.⁹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁰ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹¹ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹² Further, we request that interested parties limit their executive summary of each issue to no more than

450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.¹⁴ Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.¹⁵

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

If Conares' or Universal's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.¹⁶ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If Conares' or Universal's weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁷

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Conares or Universal for which the company did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate calculated in the less-than-fair-value (LTFV)

⁸ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the dumping margins calculated for the examined respondents; (B) a simple average of the dumping margins calculated for the examined respondents; and (C) a weighted-average of the dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty*

Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part, 75 FR 53661, 53663 (September 1, 2010); see also Memorandum, "Calculation of the Preliminary Weighted-Average Dumping Margin for the Companies Not Selected for Individual Examination," dated concurrently with this notice.

⁹ See 19 CFR 351.309.

¹⁰ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹³ See *APO and Service Procedures*.

¹⁴ See 19 CFR 351.310(c).

¹⁵ See 19 CFR 351.310(d).

¹⁶ See 19 CFR 351.212(b)(1).

¹⁷ See 19 CFR 351.106(c)(2); see also *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

investigation if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

For the companies listed above that were not selected for individual review, we will assign an assessment rate based on the review-specific rate, calculated as noted in the “Rate for Non-Individually Examined Companies” section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.¹⁹

Commerce intends to issue assessment instructions to CBP regarding Conares, Universal, and the non-individually examined companies no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following 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 the companies listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered by this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the all-others rate established

in the LTFV investigation.²⁰ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 29, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026–11118 Filed 6–2–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–807]

Certain Uncoated Paper From Portugal: Preliminary Results of Antidumping Duty Administrative Review; 2024–2025

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value (NV) during the period of review (POR), March 1, 2024, through February 28, 2025. Interested parties are invited

to comment on these preliminary results of review.

DATES: Applicable June 3, 2026.

FOR FURTHER INFORMATION CONTACT:

Monica Gillis, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6384.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2016, Commerce published in the **Federal Register** the antidumping duty order on certain uncoated paper (uncoated paper) from Portugal.¹ On March 4, 2025, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On April 28, 2025, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on uncoated paper from Portugal.³ This review covers one producer/exporter of subject merchandise, The Navigator Company, S.A. (Navigator).

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁴ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁵ On January 16, 2026, Commerce extended the time limit for completing the preliminary results of this review until May 29, 2026.⁶

¹ See *Certain Uncoated Paper from Australia, Brazil, Indonesia, the People’s Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders*, 81 FR 11174 (March 3, 2016) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 90 FR 11155, 11156 (March 4, 2025).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 17571 (April 28, 2025).

⁴ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁵ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁶ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated January 16, 2026.

¹⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁹ See section 751(a)(2)(C) of the Act.

²⁰ See *Order*, 81 FR at 91908.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁷ A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/frnotices>.

Scope of the Order

The merchandise subject to the *Order* is certain uncoated paper products from Portugal. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin exists for the period March 1, 2024, through February 28, 2025:

Producer/exporter	Weighted-average dumping margin (percent)
The Navigator Company, S.A.	2.70

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and

Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.⁸ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁰ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public executive summary for each issue raised in their briefs.¹¹ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹²

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made,

Commerce will inform parties of the scheduled date for the hearing.¹³

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

If Navigator's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.¹⁴ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If Navigator's weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁵

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Navigator for which it did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate calculated in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.¹⁶

Commerce intends to issue assessment instructions to CBP regarding Navigator no earlier than 35

⁷ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Uncoated Paper from Portugal; 2024–2025," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ See 19 CFR 351.309.
⁹ See 19 CFR 351.309(d); *see also* *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).
¹⁰ See 19 CFR 351.309(c)(2) and (d)(2).
¹¹ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.
¹² See *APO and Service Procedures*.

¹³ See 19 CFR 351.310(d).
¹⁴ See 19 CFR 351.212(b)(1).
¹⁵ See 19 CFR 351.106(c)(2); *see also* *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).
¹⁶ For a full discussion of this practice, *see* *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following 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 the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered by this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.80 percent, the all-others rate established in the LTFV investigation.¹⁷ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in

accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 29, 2026.

Christopher Abbott,

Acting Deputy Assistant Secretary for Policy and Negotiations, Performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026-11122 Filed 6-2-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-857]

Raw Honey From Brazil: Final Results of Antidumping Duty Administrative Review, 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that raw honey from Brazil was sold in the United States at prices below normal value. The period of review (POR) is June 1, 2023, through May 31, 2024.

DATES: Applicable June 3, 2026.

FOR FURTHER INFORMATION CONTACT: Braeden Lowe, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-9124.

SUPPLEMENTARY INFORMATION:

Background

This administrative review covers 14 producers/exporters of raw honey from Brazil, including mandatory respondents, Melbras Importadora E Exportadora Agroindustrial Ltda. (Melbras) and Minamel Agroindústria Ltda. (Minamel). On September 30, 2025, Commerce published the preliminary results of this review and invited parties to comment.¹

¹ See *Raw Honey from Brazil: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2023–2024*, 90 FR 46797 (September 30, 2025) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.² Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.³ On March 17, 2026, Commerce extended the time limit for completing the final results of this administrative review by 53 days.⁴ Accordingly, the deadline for the final results is now May 29, 2026.

For a complete description of the events that occurred since the *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, *see* the Issues and Decision Memorandum.⁵ The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/frnotices>.

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁶

The merchandise covered by this *Order* is raw honey from Brazil. For a complete description of the scope of the *Order*, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed the issues raised in the case and rebuttal briefs in the Issues and

² See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

³ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁴ See Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated March 17, 2026.

⁵ See Memorandum, "Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Raw Honey from Brazil; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁶ See *Raw Honey from Argentina, Brazil, India, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 87 FR 35501 (June 10, 2022) (*Order*), as amended by *Raw Honey from Brazil: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Duty Investigation; Notice of Amended Final Determination; Notice of Amended Antidumping Duty Order*, 90 FR 9225 (February 10, 2025) (*Amended Order*).

¹⁷ See *Order*.

Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is included in Appendix I to this notice.

Changes Since the Preliminary Results

We made certain changes to the margin calculations for Melbras and Minamel since the *Preliminary Results*. For a detailed discussion of these changes, see the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely" on the basis of facts available.

In this review, we calculated weighted-average dumping margins for Melbras and Minamel that are not zero, *de minimis*, or determined entirely on the basis of facts available. Therefore, Commerce assigned a margin to the non-selected companies based on the simple average of the weighted-average dumping margins calculated for the two mandatory respondents, as listed below.⁷

⁷ With more than one respondent under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects either the (B) or (C) rate based on the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Review, and Revocation of an Order*, in Part, 75 FR 53661, 53663 (September 1, 2010).

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist during the period June 1, 2023, through May 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Melbras Importadora E Exportadora Agroindustrial Ltda	4.48
Minamel Agroindústria Ltda	10.48
Non-Examined Companies ⁸	7.48

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results to interested parties within five days of any public announcement or, if there is no public announcement, within five days of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Because Melbras and Minamel's weighted average dumping margins are not zero or *de minimis* (i.e., less than 0.5 percent), we calculated importer-specific assessment rates based on the ratio of the total dumping calculated for the examined sales to the total entered value of the sales. Where an importer-specific assessment rate is either zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Melbras or Minamel for which these companies did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the amended final of the original less-than-fair-value (LTFV) investigation of 9.38 percent,⁹ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁰

⁸ See Appendix II.

⁹ See *Amended Order*, 90 FR at 9226.

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

For the companies that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established in these final results of review.

We intend to issue instructions to CBP no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed in these final results will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer is, then the cash deposit rate will be the company-specific rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 9.38 percent, the all-others rate established in the original LTFV investigation.¹¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This 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 the POR. 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.

¹¹ See *Amended Order*, 90 FR at 9226.

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 return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: May 29, 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.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes from the Preliminary Results
- V. Discussion of the Issues
 - Comment 1: Whether Commerce Should Set Melbras' Reported Imposto Sobre Circulação de Mercadorias Serviços Taxes to Zero for Certain Home Market Sales
 - Comment 2: Whether Commerce Should Set Minamel's Home Market Inland Freight Expenses to Zero as Partial Adverse Facts Available
 - Comment 3: Whether Commerce Should Deduct In-House Testing Expenses from Minamel's Home Market Sales Price
 - Comment 4: Whether Commerce Should Treat Minamel's Direct and Indirect Selling Expenses in the U.S. Market as Charges Incurred in Brazilian Reis
- VI. Recommendation

Appendix II

Companies Not Individually Examined Receiving a Review-Specific Rate

1. Annamell Imp. E Exp. De Produtos Apícolas Ltda.
2. Apidouro Comercial Exportadora E Importadora Ltda.
3. Apiários Adams Agroindustrial Comercial Exportadora Ltda.
4. Breyer & Via Ltda.
5. Central de Cooperativas Apícolas do Semiárido Brasileiro—CASA APIS.
6. Conexao Agro Ltda. ME.
7. Cooperativa Mista Dos Apicultores D.
8. Flora Nectar Ind. Comp. Imp. E Exp. De

- Mel Ltda
9. Lambertucci
10. Matrunita
11. S&A Honey Ltda EPP.
12. Wenzel's Apicultura Comercio Industria Importacao Exportacao Ltda. aka Wenzel's Apicultura.

[FR Doc. 2026–11121 Filed 6–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Matching Fund Opportunity for Ocean and Coastal Mapping and Request for Partnership Proposals

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of matching fund opportunity; request for proposals.

SUMMARY: This notice invites non-Federal entities to partner with the ocean and coastal mapping programs of NOAA's National Ocean Service on jointly-funded projects of mutual interest and establishes selection criteria and submission requirements for such projects under the Brennan Ocean Mapping Fund opportunity. With this funding opportunity, NOAA will match selected non-Federal partners for projects proposing to contract for ocean, coastal, and/or Great Lakes mapping data. Selected non-Federal partners further benefit from this opportunity by leveraging NOAA's contracting and data management expertise. This ocean and coastal mapping funding opportunity is subject to the availability of funds.

DATES: Please note the following dates associated with this opportunity:

- **Informational Webinar:** Thursday, August 13, 2026, at 1 p.m. Eastern Time (ET): This informational webinar will provide more information about the matching fund opportunity and answer any questions. Advanced registration is required. Register by 11:59 p.m. ET on Wednesday, August 12, 2026.
- **Virtual office hours:** Tuesday, September 8, 2026, between 10 a.m. and 5 p.m. ET: Advanced registration is required. Register by 11:59 p.m. ET on September 3, 2026.
- **Proposal submission and selection timeline:**
 - Statements of interest or proposals as described in Section VI of SUPPLEMENTARY INFORMATION are due Friday, October 16, 2026, by 5 p.m. ET.
 - NOAA plans to issue its decision on the proposals in December 2026. NOAA will then work with selected project

partners to develop draft agreements by the end of January 2027.

- Following final agreement approval, project partners will be expected to transfer their matching funds to NOAA in June to September 2027. Funds must be transferred before October 1, 2027.
- NOAA would issue task orders to its survey contractors under these agreements from January to September 2028.

ADDRESSES: For additional information, including a proposal template, summary of the informational webinar, presentation slides, and questions and answers, visit: <https://iocm.noaa.gov/planning/contracts-grants-agreements.html>.

- Register for the informational webinar by Wednesday, August 12, 2026 at 11:59 p.m. ET at <https://vimeo.com/event/5912341>.
 - Request a 30-minute time slot during the September 8, virtual office hours by Thursday, September 3, 2026, at 11:59 p.m. ET by emailing iwgocm.staff@noaa.gov.
 - Proposals must be submitted via email by Friday, October 16, 2026, at 5 p.m. ET to iwgocm.staff@noaa.gov.
- FOR FURTHER INFORMATION CONTACT:** Meredith Westington, NOAA Integrated Ocean and Coastal Mapping, 505–278–9851, iwgocm.staff@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA's Office of Coast Survey (OCS) and National Geodetic Survey (NGS) conduct mapping activities that are foundational to maritime commerce, domestic energy and seafood production, tourism and recreation, and hazard mitigation and emergency response, among other interests. NOAA has considerable hydrographic and shoreline mapping contracting expertise, including a cutting-edge understanding of the science and related acoustic systems as well as data standards to ensure broad usability of that data.

The Ocean and Coastal Mapping Integration Act establishes the Interagency Working Group on Ocean and Coastal Mapping (IWG–OCM) and directs NOAA to use the IWG–OCM to “establish and maintain a program to coordinate comprehensive Federal ocean and coastal mapping efforts.” (33 U.S.C. 3501) NOAA is committed to meeting this mapping requirement as collaboratively as possible and adhering to the Integrated Ocean and Coastal Mapping (IOCM) principle of “Map Once, Use Many Times.” However, the resources needed to fully achieve the goal of comprehensively mapping U.S.

waters and coasts currently exceed the capacity of NOAA and its Federal partners. Mapping the full extent of waters subject to U.S. jurisdiction relies on non-Federal partners to contribute to the effort.

The Brennan Ocean Mapping Fund, which was established by statute in 2022 (33 U.S.C. 3504a, 3506), is one way that NOAA seeks to increase the coordinated acquisition, processing, stewardship, and archival of new ocean and coastal mapping data in U.S. waters. NOAA Rear Admiral Richard T. Brennan, former OCS Director and former President of the Hydrographic Society of America, was one of IOCM's strongest advocates. Sadly, Rear Admiral Brennan passed away in May 2021. IOCM continues to implement Rear Admiral Brennan's vision and passion for collaborative ocean mapping through this matching fund opportunity named in his honor.

II. Description

This notice invites non-Federal entities to partner with the ocean and coastal mapping programs of NOAA's National Ocean Service on jointly-funded projects of mutual interest that address the strategic areas of focus noted in Section III. These projects will establish ocean, coastal, and Great Lakes survey and mapping partnerships using NOAA's geospatial contracting vehicles with pre-qualified technical experts in surveying and mapping. NOAA will use the selection criteria and submission requirements described below in sections V and VI, respectively, to review project proposals.

The goal of this Brennan Ocean Mapping Fund opportunity is to leverage NOAA and non-Federal partner funds to acquire more ocean and coastal mapping data from qualified contract surveyors during Fiscal Year (FY) 2028, which spans October 1, 2027, to September 30, 2028. Subject to the availability of funds, NOAA will match the selected entity up to 70 percent of the total project cost, with the selected entity providing at least 30 percent of the total project cost.

Subject to the availability of funds, NOAA anticipates funding between two and five projects, with a total cost of up to \$1 million per project. NOAA may consider providing additional funding for a project, subject to the availability of funds and NOAA's discretion. All projects are expected to have a FY 2028 project start date, and NOAA must receive all non-Federal partner matching funds before October 1, 2027. NOAA reserves the right to increase or decrease its funding match based on the quality and feasibility of proposals

received. After NOAA selects a non-Federal entity as a partner, NOAA will enter into an agreement with the partner pursuant to the Coast and Geodetic Survey Act of 1947 (33 U.S.C. 883e), which enables NOAA to receive and expend funds for the mapping project.

In addition to providing matching funds, NOAA brings its expertise to manage survey planning, quality assure all data and products, provide the data and products to the partners within an agreed-upon timeframe, and handle data submission to NOAA's National Centers for Environmental Information (NCEI) for archiving and public accessibility. All ocean and coastal data and related products from the Brennan Ocean Mapping Fund program will be available to the public to the greatest extent allowed by applicable laws. The specific value-added services NOAA will provide include:

- Assurance that the data are collected by qualified survey contractors to ensure broadest use and accessibility of the data;
- Project management and GIS-based task order planning, negotiation, and award of necessary procurement contracts that are tailored to meet the interests of matching fund partners and ensure the most efficient use of mapping platforms (e.g., aerial, shipboard, and uncrewed vehicles). Managing survey compliance with applicable laws, such as the National Environmental Policy Act and National Historic Preservation Act;
- Data processing, quality assessment, and review of all acquired hydrographic data; and
- Data management and stewardship through data archive at the NCEI.

Data acquisition collection methods include, but are not limited to, multibeam echosounder, side scan sonar, lidar (topographic, bathymetric, mobile), subsurface and airborne feature investigations, and sediment sampling. Products acquired may include, but are not limited to:

- Bathymetric data (multibeam, single beam, lidar);
- Backscatter;
- Water column (depth dependent);
- Side scan sonar imagery;
- Feature detection reports;
- Sensor/data corrections and calibrations (e.g., conductivity, temperature and depth casts, horizontal/vertical position uncertainty);
- Survey and control services, including the installation, operation, and removal of temporary water level and Global Navigation Satellite System Observations;
- High-resolution topographic/bathymetric product generation; and

- A final project report.

More information on NOAA's contracted surveying and mapping processes and products can be found in the:

- OCS Hydrographic Surveys Contract Vehicle at <https://nauticalcharts.noaa.gov/data/hydrographic-surveys-contract-vehicle.html>
- NGS Scope of Work for Shoreline Mapping at <https://geodesy.noaa.gov/ContractingOpportunities/cmp-sow-v15.pdf>.

III. Strategic Areas of Focus

For this opportunity, proposals will be considered that align with national priorities and the goals of the National Strategy for Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone (NOMECE, 2020) and associated Implementation Plan (NOMECE IP, 2024); the Implementation Plan for the Alaska Coastal Mapping Strategy (ACMS IP, 2022); and the OCS Strategic Plan 2023–2027 (all available at: <https://iocm.noaa.gov/about/strategic-plans.html>). Those goals include:

1. *Map U.S. Waters*: Mapping U.S. waters deeper than 40 meters by 2030 and shallower waters by 2040 would give the United States unprecedented and detailed information about the depth, shape, and composition of its seafloor and Great Lakes (NOMECE Goal 2). Based on the January 2026 analysis of data holdings at NOAA's NCEI, 44 percent of U.S. ocean, coastal, and Great Lakes waters remain unmapped (<https://iocm.noaa.gov/seabed-2030-status.html>). Acquiring the best available data in poorly surveyed and gap areas means working with partners to contribute to the effort (NOMECE Goal 5).

2. *Expand Alaska Coastal Data Collection to Deliver the Priority Geospatial Products Stakeholders Require*: Mapping the Alaska coast is challenging. However, using targeted and coordinated data collections will potentially reduce overall costs and improve the cost-benefit ratio of expanded mapping activities (ACMS IP Goal 2).

3. *Collaborate to Increase Ocean and Coastal Mapping in U.S. Waters*: OCS will partner on integrated ocean and coastal mapping, leverage current and expanded resources, and increase data acquisition using traditional and emerging technologies (OCS Strategic Plan 2023–2027 Goal 1).

The following resources may be used to support project proposals:

- the U.S. Mapping Coordination website, a collaboration site for mapping data acquisition, shows current NOAA

mapping plans as well as the latest in Federal mapping priorities and select regional mapping priorities, such as the Executive Order 14285: Unleashing America's Offshore Critical Minerals and Resources: <https://iocm.noaa.gov/maps/USMappingCoordination/>;

- the U.S. Bathymetry Coverage and Gap Analysis and associated Bathymetric Coverage Report tool: <https://iocm.noaa.gov/seabed-2030-bathymetry.html> and <https://gis.charttools.noaa.gov/bathy-coverage-report/>; and

- the U.S. Interagency Elevation Inventory: <https://coast.noaa.gov/inventory/>.

More information is available at <https://iocm.noaa.gov/planning/contracts-grants-agreements.html>.

IV. Proposal Eligibility

This matching fund opportunity is available to non-Federal entities including State and local governments, Tribal entities, universities, researchers and academia, the private sector, non-governmental organizations (NGOs), and philanthropic partners. Qualifying proposals must demonstrate the ability to provide at least 30 percent of the funds needed for the proposed project and an understanding that through this opportunity NOAA will lead the project execution through one of its contract vehicles. A coalition of non-Federal entities may assemble funds for the match and submit a proposal jointly; however, NOAA will request a central point of contact to initiate the transfer of funds to NOAA. Use of other Federal agency funds as part of the non-Federal entity's or entities' match funds will be considered on a case-by-case basis and only as authorized by applicable laws. In-kind contributions to strengthen the project proposal are welcome; however, they do not count toward the match and are not required.

V. Selection Criteria

Proposals will be evaluated by the Brennan Ocean Mapping Fund Program Management Team. Submissions will be ranked based on the following selection criteria:

1. *Project justification (30 points)*—This criterion ascertains whether there is intrinsic IOCM value in the proposed work and/or relevance to national priorities and NOAA's strategic areas of focus (noted in section III), including downstream partner proposals and uses. It is recommended to make use of, and reference to, resources outlined in section III.

2. *Statement of need (10 points)*—This criterion assesses clarity of project need, partner project funding

alternatives if not selected, anticipated outcomes, and public benefit.

3. *Specified partner match (20 points)*—This criterion evaluates the partner match, such as the identification of a point of contact for the entity submitting the proposal, as well as any partnering entities; a clear statement on partner matching funds provenance (e.g., State appropriations, NGO funds, or other sources); and timing of funds availability. Proposals with multiple partners that are combining funds for the match will need to identify a central point of contact who will work with the partners to collate the funds and initiate the transfer of funds to NOAA. In-kind contributions do not count toward the funding match, but are welcome to strengthen the proposal.

4. *Project costs (15 points)*—This criterion evaluates whether the proposed budget is realistic and commensurate with the proposed project needs and timeframe.

5. *Project feasibility and flexibility (25 points)*—This criterion assesses the likelihood that the proposal would succeed, using evaluations of survey conditions, project size, location, weather, NOAA analysis of environmental compliance implications, project flexibility and adaptability to existing NOAA plans and schedules, and other factors.

During the proposal review period, the Brennan Ocean Mapping Fund Program Management Team reserves the right to engage with proposal points of contact to ask questions and provide feedback on project costs and feasibility.

VI. Submission Requirements

Project Proposal—To qualify, a proposal shall not exceed six (6) total pages and must include the following three components:

1. A project title; executive summary (3–5 sentences); and the names, affiliations, and roles of the project partners and any co-investigators, as well as the project lead that will serve as primary contact (1 page maximum).

2. A justification and statement of need; description and graphics of the proposed survey area, including relevance to the strategic areas of focus noted in section III and degree of flexibility on timing of survey effort (4 pages maximum).

3. A project budget that lists the source(s) and amount(s) of funding that the partner would provide as its match to NOAA. The budget must confirm that partner funds can be transferred to NOAA before October 1, 2027 (1 page maximum).

Proposals must be sent in a PDF format, and use 12-point, Times New

Roman font, single spacing, and 1-inch margins. Failure to adhere to these submission requirements will result in the proposal being returned without review and eliminated from further consideration. To assist with drafting, a Brennan Ocean Mapping Fund proposal template is available at <https://iocm.noaa.gov/planning/contracts-grants-agreements.html>.

To facilitate review, NOAA welcomes the submission of GIS files of project areas. These ancillary GIS files must be in SHP format.

Project proposals, including any optional GIS files of the proposed project areas, must be received via email at the email address listed in the **ADDRESSES** section by the deadline stated in the **DATES** section. Please include all required components of the proposal as attachments to one email. If an entity is unable to apply for this particular opportunity, but is interested in participating in similar, future opportunities, NOAA requests a one-page statement of interest, also by the deadline stated in the **DATES** section. Incomplete and late submissions will not be considered.

VII. Management and Oversight

Once the Brennan Ocean Mapping Fund Program Management Team selects project proposals, NOAA will coordinate the development of agreements, funding transfers, project planning, environmental compliance, acquisition awards, and the quality assurance process with the project partners. NOAA may bring in additional partners and/or funding (Federal and/or non-Federal) to expand a project, if feasible. Approved projects will be reviewed by NOAA annually to ensure they are responsive to partner interests and NOAA mission requirements.

Authority: 33 U.S.C. 883e; 33 U.S.C. 3504a, 3506.

Christiaan van Westendorp,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2026–11051 Filed 6–2–26; 8:45 am]

BILLING CODE 3510-G1-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; The Ocean Enterprise: A Study of US Business Activity in Ocean Measurement, Observation and Forecasting**

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 August 3, 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 0648–0712 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 Zack Baize, Program Manager, U.S. IOOS Office, National Ocean Service, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 202–743–4727, zack.baize@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

This is a request for extension of an approved information collection. NOAA's National Ocean Service's U.S. Integrated Ocean Observing System (IOOS) Office is requesting approval to continue a web-based survey of

employers who provide either services or infrastructure to IOOS or organizations that add value to the IOOS data and other outputs by tailoring them for specific end uses. The purpose of the survey and overall project is to gather information to articulate the collective and derived value of the IOOS enterprise and to create a profile of businesses and organizations who are involved with providing services or utilizing IOOS data for other specific end uses. This survey was conducted in FY2015, FY2020, and FY2025 and is intended to be repeated on a regular basis in order to track the growth of the U.S. Ocean Enterprise. The survey provides critical assessment data and is necessary in order to collect demographic, financial, and functional information for each organization with regards to their involvement with IOOS. Data from this web survey will be analyzed and used to produce a final report. The results will demonstrate the size and economic impact of IOOS data to the United States marine ocean sector.

II. Method of Collection

Electronically (internet) and via email.

III. Data

OMB Control Number: 0648–0712.

Form Number(s): None.

Type of Review: Regular submission; Extension of a current information collection.

Affected Public: Business or other for-profit organizations and Not-for-profit institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 125.

Estimated Total Annual Cost to Public: \$0

Respondent's Obligation: Voluntary.

Legal Authority: Section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. 116–271).

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 of Economic Affairs, Commerce Department.

[FR Doc. 2026–11128 Filed 6–2–26; 8:45 am]

BILLING CODE 3510–JE–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; Limits of Application of Take Prohibitions**

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 August 3, 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 0648–0399 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 Robert Markle, NOAA Fisheries, 1201 NE Lloyd Blvd. Suite 1100, Portland, OR 97232, (503) 230–5419 or robert.markle@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it “deems necessary and advisable to provide for the conservation of” threatened species. Those regulations may include any or all the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits “take” of any endangered species (“take” includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of section 9 take prohibitions. There are now 23 separate Distinct Population Segments (DPS) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington, and Idaho. NMFS is obligated to enact necessary and advisable protective regulations. NMFS makes section 9 prohibitions generally applicable to many of those threatened DPS, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted (see 70 FR 37160, June 28, 2005, 71 FR 834, January 5, 2006, and 73 FR 55451, September 25, 2008). The regulations describe programs or circumstances that contribute to the conservation of or are being conducted in a way that limits impacts on listed salmonids. Because

we have determined that such programs/circumstances adequately protect listed salmonids, the regulations do not apply the “take” prohibitions to them. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits or continue within them.

The currently approved application and reporting requirements apply to Pacific marine and anadromous fish species.

II. Method of Collection

Submissions may be electronically or on paper.

III. Data

OMB Control Number: 0648–0399.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Federal government; State, Local, or Tribal government; Business or other for-profit organizations; Not-for-profit institutions.

Estimated Number of Respondents: 707.

Estimated Time per Response: Limit 3: Fish Rescue, 4 hours. Limit 4: CA—FMEP Annual Reporting, 4 hours; CA—FMEP Development/Submission, 1,230 hours; ID—FMEP Development/In season Reporting/Submission of Annual Reports, 120 hours; OR—FMEP Development/Submission of Annual Reports, 120 hours; WA—FMEP Development/Submission of Annual Reports, 100 hours. Limit 4, 6 and 14—Puget Sound/Klamath Basins: Annual Reporting, 104 hours; Development of RMP, 624 hours; Submittal of RMP, 150 hours; Litigation Assistance, 416 hours. Limit 5: CA—HGMP Annual Reporting, 8 hours; CA—HGMP Development/Submission, 2,080 hours. Limit 5 and 6: ID—RMP/HGMP Development/Submission of Annual Reports, 120 hours; OR—RMP/HGMP Development/Submission of Annual Reports, 120 hours; WA—RMP/HGMP Development/Submission of Annual Reports, 120 hours. Limit 6—Fisheries—Columbia River Basin, 120 hours. Limit 7—State Research Programs: Applications, 5 hours; Modifications, 2 hours; Reports, 3 hours. Limit 10: OR—5-year plan submission, 160 hours; OR—Annual Reporting, 40 hours; CA—Annual Reporting, 4 hours. Limit 14—CA—Annual Reporting, 8 hours.

Estimated Total Annual Burden Hours: 167,872 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*).

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. 2026–11133 Filed 6–2–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF688]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Alaska Modernization Program Phase 2B: Cargo Terminals Replacement Project in Anchorage, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a modified letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a modified letter of authorization (LOA) has been issued to the Don Young Port of Alaska (POA), for the unintentional taking of marine mammals incidental to the Cargo Terminals Replacement (CTR) project at the existing port facility in Anchorage, Alaska over the course of 5 years (2026–2031). Specifically, NMFS has updated table 2 Shutdown and Harassment Zones for vibratory extraction of 42-inch (in), 48-in, and 72-in steel pipe piles. In doing so, NMFS determined that the anticipated impacts are the same as those described in the final rule, the modification does not change the findings made for the regulations, the modification does not result in any change in the authorized number of takes of marine mammals, and the requirements of the previous LOA were implemented. As required under the relevant Incidental Take Regulations, NMFS is publishing a notice of issuance of the modified LOA.

DATES: This LOA is effective from the date of issuance through February 28, 2031.

ADDRESSES: The modified LOA and supporting documentation are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-port-alaskas-construction-activities-port-alaska-modernization>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the mitigation, monitoring, and reporting of the takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request and Analysis

On July 15, 2025, we promulgated a final rule upon request from the POA for authorization to take marine mammals incidental to their in-water construction and demolition activities associated with the CTR Project at the existing port facility in Anchorage, Alaska (90 FR 31756) and subsequently issued a LOA thereunder (50 CFR 217.17; 90 FR 40566, Aug. 20, 2025). Specifically, NMFS authorized the take of 7 species, comprising 10 stocks, by Level A and Level B harassment incidental to acoustic disturbance from impact pile driving; we refer to the final rule and notice of issuance for the complete discussion (90 FR 31756, 90 FR 40566).

On January 21, 2026, POA notified NMFS of updates to its construction plan: use of one 72-in temporary pile rather than four 36-in temporary piles per pile location; vibratory extraction of 42-in and 48-in steel pipe piles that are part of the existing structure; and extending the construction schedule of

Terminal 1 (T1) into the fourth year of the 5 year authorization. NMFS determined the extended construction schedule of T1 is consistent with the existing authorization. NMFS also determined that the other construction plan updates will have the same impacts analyzed in the rule and do not change the findings made for the regulations but the addition of shutdown and monitoring zones to table 2 of the LOA are necessary.

The final rule analyzed unattenuated vibratory installation of 72-in diameter pipe piles, resulting in a Level B harassment isopleth of 9,039 m (bin 5; >6,639 m) (90 FR at 31773 July 15, 2025, table 10). There are no existing data on sound levels produced by vibratory extraction of 72-in piles. NMFS has therefore used sound levels produced by vibratory installation of 72-in piles as a reasonable proxy for sound levels produced during vibratory extraction. Thus, the analysis for vibratory extraction of 72-in piles is identical to the analysis for vibratory installation of the same pile size and the activity is expected to have the same Level B harassment isopleth.

The POA originally anticipated that existing piles would be left in place, cut at the mudline, or extracted via dead-pull methods (89 FR at 85687, October 28, 2024). Vibratory driving of both smaller (24-in and 36-in) and larger (72-in) steel pipe piles was analyzed in the rule, and vibratory extraction of intermediate sized piles is anticipated to have the same general effects on marine mammals. Previous phases of the Port of Alaska Modernization Program included hydroacoustic monitoring of vibratory installation of 48-in piles (Austin *et al.*, 2016, Illingworth and Rodkin 2021). NMFS used these data to evaluate the expected isopleth from vibratory extraction of 48-in piles at the POA. There are no existing data for vibratory pile installation or extraction of 42-in piles at the POA; thus, 48-in pile data was used as a proxy for both 42-in and 48-in piles. Using the median measured source values and the transmission loss coefficients measured during these projects, NMFS calculated the median source value estimated at 10 m from the piles (table 1) and used that value to calculate the estimated sound propagation under the conditions used in the final rule (Transmission Loss Coefficient (TL) = 16.5 for unattenuated vibratory driving; 90 FR at 31770–31771, July 15, 2025). The estimated Level B harassment isopleth for unattenuated vibratory driving (installation and extraction) of 48-in piles is 6,222 m.

TABLE 1—MEASURED AND CALCULATED SOURCE VALUES FOR UNATTENUATED VIBRATORY DRIVING OF 48-IN PILES AT THE POA DURING THE PCT PROJECT (ONE PILE) AND THE 2016 TEST PILE PROGRAM (3 PILES)

Report	Pile	Measured values			Converted values		Median SL @ 10m (dB re 1 μ Pa RMS)
		Range (m)	TL coefficient	Median RMS source level (dB re 1 μ Pa)	Converted range (m)	Median RMS source level (dB re 1 μ Pa) @ 10 m	
Illingworth and Rodkin (2021)	B-1	16	18.2	167	10	170.7	168.3
Austin <i>et al.</i> (2016)	IP1	14	18.35	166.3	10	169	
.....	IP15	11	18.35	166.8	10	167.6	
.....	IP6a	12	18.35	162.9	10	164.4	

The estimated distance to the Level B harassment isopleth for unattenuated 48-in pile extraction (6,222 m) falls within the same spatial bin as unattenuated installation of 36-in piles shown in the final rule (bin 4; 3,150 m to 6,639 m) (90 FR at 31778, July 15, 2025). The source values and estimated Level B harassment isopleths for extraction of 42-in piles are also expected to fall within the same bin, making 48-in and 42-in piles analytically indistinguishable from 36-in piles in the estimated take analysis. Therefore, NMFS has determined that the adjustment to the project design does not require any modification beyond the necessary changes to distances associated with required shutdown measures and that this modification does not change the findings made for the regulations and does not result in changes in the total authorized take numbers.

The shutdown zones for all species (see table 20, 90 FR at 31783, July 15, 2025) were calculated based on the minimum 100-m shutdown zone proposed by the POA for all pile installation and vibratory extraction activities, as well as the calculated Level A (non-Cook Inlet beluga whale (CIBW) species) and Level B (CIBWs) harassment isopleths. For CIBWs, the shutdown zones exceed the calculated Level B harassment isopleths in all scenarios.

Table 2 of the LOA has been modified to include shutdown and harassment zones for vibratory extraction of 42-in, 48-in, and 72-in diameter steel pipe piles. There are no other changes to the LOA.

Authorization

NMFS has issued a modified LOA to POA authorizing the take, by harassment, of small numbers of marine mammals incidental to in-water construction and demolition activities associated with the CTR project, which includes the modification discussed herein.

Dated: May 29, 2026.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2026–11127 Filed 6–2–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2026–0265]

Standards Participation and Representation Kudos (SPARK) Pilot Program

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

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is launching the Standards Participation and Representation Kudos (SPARK) Pilot Program to incentivize meaningful participation in standards development organizations (SDOs) by U.S. small and medium-sized businesses, universities, and non-profit organizations. Under the pilot program, examination of certain patent applications and *ex parte* appeals to the Patent Trial and Appeal Board (PTAB) may be expedited if the U.S.-domiciled juristic applicant meaningfully participated in a voluntary consensus-based SDO and meets the requirements specified in this notice. The application or appeal being expedited does not need to be related to the SDO participation. The expedited examination or appeal provides additional tangible value for the time and resources invested in standards development. Applications accepted into the pilot program for expedited examination will be advanced out of turn, that is, accorded special status, for examination until a first Office action is issued, and *ex parte* appeals accepted into the pilot program will be advanced out of turn before the PTAB. This notice sets forth the requirements of the pilot

program and describes how the pilot program will be administered.

DATES: *Pilot Duration:* The SPARK Pilot Program will accept petitions requesting expedited examination or appeal beginning June 3, 2026 until either June 3, 2027 or the date the USPTO grants a total of 200 petitions, whichever is earlier. The USPTO may, at its sole discretion, terminate the pilot program for any reason, including factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is terminated, the USPTO will notify the public. The USPTO, on its website, will specify the number of petitions filed and the number of petitions granted under the pilot program.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding this pilot program, please contact Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–272–7711; or Brannon Smith, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–270–1601; or SPARKprogram@uspto.gov. For questions on electronic filing, please contact the Patent Electronic Business Center (EBC) at 866–217–9197 (during its operating hours of 9 a.m. to 8 p.m. ET, Monday–Friday) or ebc@uspto.gov. For questions related to a particular petition requesting expedited examination of an application, please contact the Office of Petitions at 571–272–3282. For questions related to a particular petition requesting expedited *ex parte* appeal of an application, please contact the Patent Trial and Appeal Board at 571–272–9797.

SUPPLEMENTARY INFORMATION: The USPTO is launching the Standards Participation and Representation Kudos (SPARK) Pilot Program to incentivize meaningful participation in standards development organizations (SDOs) by U.S. small and medium-sized

businesses, universities, and non-profit organizations. Technical standards are a key component of the innovation ecosystem—from telecommunications and artificial intelligence to manufacturing and cybersecurity—and American leadership in standards development is essential to innovation, competitiveness, and national security. Small and medium-sized businesses, universities, and non-profit organizations bring critical expertise and innovative thinking to standards development. However, resource constraints often prevent smaller U.S. entities from meaningfully participating in SDOs, where standards are developed that can determine market access and shape the competitive landscape. The SPARK program helps to lessen these constraints by offering expedited examination for applications and expedited appeals to the PTAB to certain U.S.-domiciled juristic applicants that have made technical contributions to or otherwise meaningfully participated in SDO activities. The application or appeal being expedited under the program does not need to be related to the SDO participation.

The initial design of the pilot program envisioned a two-step process for eligible applicants to receive expedited examination of patent applications or appeals to the PTAB. *See Press Release, USPTO to launch SPARK Pilot Program to strengthen U.S. standards development leadership* (January 13, 2026), www.uspto.gov/about-us/news-updates/uspto-launch-spark-pilot-program. The first step offered redeemable certificates for expedited examinations or appeals if participants met certain requirements, and the second step allowed successful participants to redeem these certificates to expedite an examination or appeal before the USPTO. The program has been redesigned as a one-step petition process to enable eligible participants to immediately request expedited examinations and appeals. Earlier review of patent applications and appeals offered under the program to eligible participants provides additional tangible value for the time and resources invested in standards development.

New patent applications ordinarily are taken up for examination in the order of their U.S. filing date or national stage entry date (*see* sections 708 and 1893.03(b) of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 01.2024, November 2024)), and appeals to the PTAB are normally taken up for decision in the order in which they are docketed (*see* USPTO Standard Operating Procedure 1 (June

12, 2024), available at www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/resources). The USPTO has procedures to advance out of turn, that is, accord special status to, the examination of a utility application, provided that the applicant files (1) a petition to make special, or (2) a request for prioritized examination. *See* 37 CFR 1.102 and *Discontinuation of the Accelerated Examination Program for Utility Applications*, 90 FR 24324 (June 10, 2025) (final rule). A small number of appeals are advanced out of turn due to a special status accorded to the application throughout prosecution without the need to separately petition the PTAB for special status. For example, appeals in reexamination proceedings and reissue applications are treated as special because reexamination proceedings are handled by the USPTO with “special dispatch,” and reissue applications are treated as special throughout their pendency. *See* Section 708.01 of the MPEP. Applications that have been “made special” during examination through a petition based on the age or health of the inventor or a joint inventor, or for other reasons listed in 37 CFR 1.102 (a)–(d), also maintain their special status through any appeal. *See* MPEP 1203(II). Furthermore, for the same reasons, an appellant may also petition the PTAB to have an application on appeal made special. *See id.*

In order for an applicant to participate in the program, the applicant must file a petition under the program and meet all the requirements detailed in Part I of this notice. To expedite examination under this program, the applicant must file a petition to make special under 37 CFR 1.102(d) in an original (non-reissue) nonprovisional utility application using form PTO/SB/479a (*see* Part I.F. below). Applications accepted into the program will be advanced out of turn, that is, accorded special status, until a first Office action under 35 U.S.C. 132 (hereinafter “first Office action”), which may be a written restriction requirement, is issued. After the first Office action, the application will no longer be treated as special during examination. To expedite an appeal under this program, the appellant must file a petition under 37 CFR 41.3 in an original (non-reissue) nonprovisional utility application under appeal using form PTO/SB/479b (*see* Part I.F. below). Appeals accepted in the program will be taken out of turn for assignment to a PTAB panel. Based on the special procedure specified in this notice, the petition fee requirements of 37 CFR 41.3 and 37 CFR 1.102(d) are

hereby waived. No petition fees are required to file a petition requesting participation in the program. In addition, all of the other requirements for a petition under 37 CFR 1.102(d) as set forth in MPEP 708.02(a) are also waived by this program.

I. Requirements To Participate in the SPARK Pilot Program

The application or appeal and the petition must meet the following requirements.

A. Applicant Eligibility

To qualify for this program, the applicant must meet the following requirements as of the date the petition under the program is filed. The term “applicant” is inclusive of applicants and appellants throughout this notice.

i. Small Entity Qualifications

The applicant must be a juristic entity (for example, an organizational assignee) and must certify in the petition that it is a small business concern or a nonprofit organization (including a university or other institution of higher education) and that it qualifies as a small entity under 37 CFR 1.27 at the time of filing the petition under the program. The petition must also certify that the application is in a discounted fee status, that is, the applicant has already asserted small entity status or certified micro entity status.

The term “small business concern” is defined under section 3 of the Small Business Act. For purposes of USPTO fee discounts and this program, a small business concern must satisfy the requirements of 37 CFR 1.27(a)(2) including the size standards set forth in the Small Business Administration (SBA) rules 13 CFR 121.801 through 121.805. These SBA rules require, *inter alia*, that the concern’s “number of employees, including affiliates, does not exceed 500 persons.” In this regard, SBA rules 13 CFR 121.103 and 121.106 set forth how affiliation is determined and how to calculate the number of employees. Questions relating to standards for a small business concern may be directed to the Small Business Administration, Office of Size Standards, 409 Third Street SW, Washington, DC 20416, or by telephone at (202) 205–6618, or by email at sizestandards@sba.gov.

The term “nonprofit organization” is defined in 37 CFR 1.27(a)(3), and includes universities and other institutions of higher education, organizations of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and

exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), and nonprofit scientific or educational organizations qualified under a State nonprofit organization statute. For more information about nonprofit organizations for purposes of USPTO fee discounts and this program, see section 509.02, subsection III, of the MPEP.

If the juristic applicant has established either small entity status or micro entity status in the application at the time the petition is filed, then the applicant has met the small entity qualification. In order to qualify for micro entity status, an applicant must necessarily qualify for small entity status. See 37 CFR 1.29 and MPEP 509.04 for information on establishing micro entity status.

ii. Domicile Requirement

The applicant must be domiciled in the United States or its territories and must make this certification in the petition. For purposes of this program, the domicile of a juristic applicant is the principal place of business of the applicant. The domicile of a juristic applicant will normally be determined based on the mailing address made of record that was provided in the Applicant Information section of the Application Data Sheet (ADS). If the mailing address of record is not the applicant's principal place of business, applicant should file a corrected ADS to update the mailing address to match its domicile no later than the date the petition under the pilot program is filed.

iii. Application Must Name a Single Juristic Entity as the Applicant

Since the expedited examination of the application or appeal is based on a single juristic entity's meaningful participation in SDO activities in developing a technical standard, the application must name a single juristic entity as the applicant. If more than one juristic entity is named as the applicant or if a juristic entity and an individual are named as the applicant, the application is not eligible for this program. For example, an application naming Company A and University B as the applicant is not eligible for the pilot program. Similarly, an application naming Company A and Inventor X as the applicant is not eligible for the pilot program.

B. SDO-Related Requirements for Meaningful Participation in an SDO

i. Voluntary Consensus-Based SDOs

The applicant must certify in the petition that it meaningfully

participated (as explained below in Part I.B.iii.) in developing a technical standard with a voluntary consensus-based SDO. Voluntary consensus-based SDOs facilitate broad representation in the standards setting process by being open to all interested stakeholders. Non-exhaustive examples of voluntary consensus-based SDOs include SDOs accredited by the American National Standards Institute or international SDOs operating under the principles of openness, balance, due process, and an appeals process. Furthermore, the United States promotes voluntary consensus-based standards. See, for example, 15 U.S.C. 272(b)(3), which, in discussing the functions of the National Institute of Standards and Technology (NIST), emphasizes "where possible the use of standards developed by private, consensus organizations." See also OMB Circular A-119 (revised 2016) at www.nist.gov/standardsgov/key-federal-law-and-policy-documents-ntta-omb-119.

ii. Identification of the Technical Standard

The technical standard must be completely identified in the petition. The technical standard should be identified by including its alpha-numeric designation along with its title in the space provided in the petition form (form PTO/SB/479a or form PTO/SB/479b). Typically, the format for identifying a technical standard includes a prefix containing the acronym of the SDO(s) (the prefix may also contain other acronyms about the standard or its status) followed by the unique identifier for the standard (which is usually numeric but can be alpha-numeric), the year of its publication, and the title of the standard. If the SDO does not have an acronym, the applicant should provide the full name of the SDO before the unique identifier. The following is an example of how the technical standard should be identified in the petition form: ISO/IEC 42001:2023 Information technology—Artificial intelligence—Management system. This example is a joint standard developed by the SDOs ISO and IEC as indicated by the prefix ISO/IEC. The unique identifier is 42001 (also referred to as the standard number), its publication year is 2023 (some SDOs use a hyphen instead of a colon between the unique identifier and the publication year), and the title of the standard is "Information technology—Artificial intelligence—Management system."

If the technical standard is a new standard currently under development, the applicant should indicate "202x" for

the publication year. If a permanent unique identifier for the standard has not been assigned for the new standard currently under development, the applicant should list the temporary identifier assigned by the SDO. For example, if the new technical standard is currently under development and is unpublished, the technical standard should be identified as "[prefix containing acronym for SDO(s)] XXXXXX-202x [title]" where XXXXXX is the temporary identifier assigned by the SDO.

If the technical standard under development is a revision of an existing standard, the applicant should provide the technical standard being revised in parentheses immediately after identifying the standard under development on the petition form. The applicant should indicate on the petition form the alpha-numeric designation of the existing standard being revised in parentheses as follows: (revision of [prefix containing acronym for SDO(s)] [unique identifier] [year of publication]).

iii. Meaningful Participation With a Voluntary Consensus-Based SDO

The applicant must certify in the petition that it meaningfully participated in developing the technical standard identified in the petition with a voluntary consensus-based SDO. For the purposes of this pilot program, meaningful participation with a voluntary consensus-based SDO in developing the technical standard means completing 40 or more hours of active participation with the voluntary consensus-based SDO. Non-limiting examples of active participation with a voluntary consensus-based SDO include drafting and submitting proposals or technical contributions, participating in a working group or technical committee, and providing public comments on a draft technical standard. The meaningful participation must have taken place on or after January 13, 2026, which is the date that the pilot program was first announced.

C. Eligible Applications and Appeals

The pilot program is available for original (non-reissue) nonprovisional utility applications filed under 35 U.S.C. 111(a) and any *ex parte* appeals of these applications. Applications entering the national stage under the Patent Cooperation Treaty (PCT) as set forth in 35 U.S.C. 371 are not eligible for this program.

To be eligible for expedited examination under the program, the application must not have been previously granted special status under

any other program. For example, if an application was previously granted special status under prioritized examination as provided for in 37 CFR 1.102(e) (also known as Track One), the application will not be eligible for expedited examination under this program. Similarly, the application will not be eligible for expedited examination under this program if it received special status due to the age or health of the inventor or a joint inventor. To be eligible for expedited appeal to the PTAB under this program, the appeal must not be currently granted special status under any program. If an appeal of the application is currently under special status due to the age or health of the inventor or a joint inventor or the appeal is currently subject to any other pilot program that advances the appeal out of turn (for example, the Fast-Track Appeals Pilot Program), the appeal would not be eligible for this pilot program. See MPEP 708.01 for a complete list of cases that are treated as special during appeal. Special status previously granted to an application does not bar expedited appeal of that application under this program if the application is currently not under special status when on appeal to the PTAB.

D. Claim Limits and No Multiple Dependent Claims

The application must contain no more than three independent claims and no more than 20 total claims ("program claim limits") and must not contain any multiple dependent claims. If an application exceeds three independent claims or 20 total claims, or if it contains any multiple dependent claims, the applicant should file a preliminary amendment in compliance with 37 CFR 1.121 (for petitions to expedite examination of an application) or an amendment in compliance with 37 CFR 41.33 (for petitions to expedite an appeal) to cancel any excess claims or multiple dependent claims no later than the date the petition under the pilot program is filed. Any amendment to the claims submitted after the filing date of the petition will not be considered in deciding the petition.

After an application has been granted special status under the pilot program, any amendment that does not comply with the program claim limits or adds a multiple dependent claim is not permitted. The examiner may refuse entry of any amendment filed in reply to an Office action that, if entered, would result in a set of pending claims that exceeds the program claim limits or adds a multiple dependent claim. See Part III.A. of this notice.

The petition to expedite examination must include a statement that applicant agrees not to present an amendment with more than three independent claims, more than 20 total claims, or a multiple dependent claim during the remainder of prosecution if the application is accepted into the program. Form PTO/SB/479a contains the required statement.

E. Petition Filing Limit and Only One Granted Petition per Technical Standard

The applicant must certify in the petition that (1) it has not submitted any other petition under this program based on the same technical standard identified in the petition that either was granted or is currently undecided, and (2) it has not submitted more than two other petitions under this program. In other words, no more than one petition under the program based on applicant's participation in developing the same technical standard may be granted or be currently undecided, and the applicant may file no more than three petitions under the program, which includes petitions that are currently undecided, granted, or dismissed.

For purposes of this pilot, a revised standard is not the "same technical standard" as an earlier version of the standard. Furthermore, the applicant may have up to two petitions granted under the program in the same application that are based on its meaningful participation for different technical standards (that is, a first petition to expedite examination based on its meaningful participation in developing technical standard TS1, and a second petition to expedite an appeal in the same application based on its meaningful participation in developing a second technical standard TS2).

The following examples illustrate the petition filing limit of three petitions under the program (both petitions to expedite examination and petitions to expedite appeals under this pilot program count towards this limit) and the prohibition of more than one granted petition based on the same technical standard.

- Company A, named as the applicant on the application, files a first petition to expedite examination under the program based on its meaningful participation in developing technical standard TS1. It should not file any other petition under the program based on technical standard TS1, including a petition under the program to expedite examination of another application or a petition to expedite the appeal in the same application or in another application. Company A may file

another petition based on its meaningful participation in developing standard TS2 to expedite examination in another application and another petition based on its meaningful participation in developing standard TS3 to expedite an appeal in an application. If Company A files a fourth petition under the program based on its meaningful participation in developing standard TS4 to either expedite examination of an application or an appeal, the petition will be dismissed because Company A has already filed three petitions under the program.

- Company B, named as the applicant on the application, files three petitions—one based on the technical standard TS1 and two based on the technical standard TS2. Only two of the petitions based on technical standards TS1 and TS2 may be granted and the third petition based on technical standard TS2 will be dismissed because another petition based on the same technical standard was granted. If Company B files a fourth petition based on technical standard TS3, the petition will be dismissed because Company B has already filed three petitions under the program.

F. Petition Requirements

i. USPTO Form Required for Filing Petition

To request expedited examination under this pilot program, an applicant must file a petition to make special under 37 CFR 1.102(d) using USPTO form PTO/SB/479a, titled "CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE STANDARDS PARTICIPATION AND REPRESENTATION KUDOS (SPARK) PILOT PROGRAM TO EXPEDITE EXAMINATION OF AN APPLICATION" (available at www.uspto.gov/PatentForms).

To request expedited appeal under this pilot program, appellant must file a petition under 37 CFR 41.3 using USPTO form PTO/SB/479b, titled "CERTIFICATION AND PETITION UNDER THE STANDARDS PARTICIPATION AND REPRESENTATION KUDOS (SPARK) PILOT PROGRAM TO EXPEDITE AN APPEAL TO THE PATENT TRIAL AND APPEAL BOARD (PTAB)" (available at www.uspto.gov/PatentForms). The petition under 37 CFR 41.3 must identify the application and appeal by application number and appeal number, respectively.

The USPTO forms PTO/SB/479a and PTO/SB/479b contain all the certification statements required to participate in the pilot program. Use of

the USPTO forms will enable the USPTO to quickly identify and timely process the petitions. In addition, use of the USPTO forms will help applicants understand and comply with the petition requirements of the pilot program. The USPTO has submitted change worksheets to the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

ii. Electronic Filing of the Petition Required

The petition requesting expedited examination under the program may only be made by filing form PTO/SB/479a, which must be filed electronically using the USPTO patent electronic filing system, which is currently Patent Center (at www.uspto.gov/PatentCenter). Applicants must file the petition using the document description "Petition to make application special under the SPARK pilot."

The petition requesting expedited appeal to the PTAB under the program may only be made by filing form PTO/SB/479b, which must be filed electronically using the USPTO's Patent Center. Appellants must file the petition using the document description "Petition to expedite an appeal under the SPARK pilot and Rule 41.3."

iii. Time for Filing the Petition Under the Program

The petition to request expedited examination using USPTO form PTO/SB/479a must be filed before a first Office action, including an action containing only a written restriction requirement, is issued in the application. An applicant should not file a petition to make special under the pilot program in an application that is already docketed to an examiner. Because preparing a first Office action may begin soon after an application is docketed to an examiner, the USPTO will generally dismiss a petition under the pilot program if the application has already been docketed to a particular examiner in a Technology Center at the time the petition is taken up for decision.

The petition to request expedited appeal to the PTAB using USPTO form PTO/SB/479b must be filed between (1) the date when the PTAB issues a notice that the appeal has been docketed to the PTAB, and (2) the date at which the appellant withdraws the appeal, a final decision is rendered by the PTAB under 37 CFR 41.50, or PTAB jurisdiction ends under 37 CFR 41.35. Petitions may be filed for *ex parte* appeals regardless of

whether the appeal is newly docketed or was previously docketed.

iv. Signature Requirements for the Petition

Juristic applicants must be represented by a patent practitioner. See 37 CFR 1.31. The petition for the program must be properly signed by a registered patent practitioner in accordance with 37 CFR 1.33(b) and 11.18.

G. Limits on the Number of Petitions Granted Under the Pilot Program

The limits on the number of petitions granted under the program include both the petitions granted to expedite examination and petitions granted to expedite an appeal to the PTAB. The number of petitions granted under the program is limited to 50 granted petitions per quarter, and a total of 200 granted petitions. In addition, no more than 50 petitions may be granted to expedite appeals under the program, and no more than 50 petitions may be granted to expedite examination under the program for each Technology Center (TC) that examines utility applications. Once a quota for a quarter or for the program is reached, the remaining petitions, even those filed in new applications undergoing pre-examination processing, will generally be dismissed. The start and end dates for each quarter will be posted on the program web page, and each quarter will span approximately three months. Before filing a petition under the program, applicant should check the program web page to see whether the PTAB, TC, and quarterly petition grant limits have been reached.

II. Handling of Petitions Under the Pilot Program

A. Petitions Filed To Expedite Examination of an Application

If the applicant files a petition to expedite examination under the pilot program, the USPTO will usually decide the petition in the order received. A petition to expedite examination under this program is grantable only during the time period after the application has completed pre-examination processing and before a first Office action is issued. If the petition is granted, the application will be accorded special status under the pilot program. The application will be placed on an examiner's special docket until the first Office action (which may be a written restriction requirement) is issued. After the first Office action, the application will no longer be treated as special during examination. For example, if an

amendment is filed in response to a first Office action, it will be placed on the examiner's regular amended docket.

Meeting the requirements in Part I of this notice will not ensure acceptance of the application into the pilot program. The USPTO will generally dismiss a petition under the pilot program to expedite examination if the application has already been docketed to an examiner in a Technology Center at the time the petition is being reviewed for decision or if a program quota as set forth in Part I.G. of this notice has been reached. If the petition to expedite examination under the pilot program does not comply with the requirements set forth in this notice, the applicant will be notified by a decision dismissing the petition. In view of the limited duration of the pilot program and the limited number of applications being accepted into the pilot program, an applicant will not have an opportunity to correct deficiencies in the petition after a petition is dismissed on the merits. However, if a petition was dismissed solely because a quota was reached, that is, the petition was not dismissed on the merits, then applicant may file another petition to expedite examination under the pilot program in the same application during the next quarter of the program but both of these filings count towards applicant's petition filing limit.

B. Petitions Filed To Expedite an Appeal to the PTAB

Petitions to expedite an appeal under this program will be decided in the order they are received. Meeting the requirements in Part I of this notice will not ensure acceptance of an appeal into the pilot program. The USPTO will generally dismiss a petition to expedite an appeal under the program if a program quota as set forth in Part I.G. of this notice has been reached. Petitions meeting the requirements listed above for entry into the pilot program including program quota limits will be granted, and the appellant will be notified by a decision granting the petition of the special status accorded to the appeal. Petitions not meeting the requirements will be dismissed, and the appellant will be notified by a decision dismissing the petition. In view of the limited duration of the pilot program and the limited number of appeals being accepted into the pilot program, an appellant will not have an opportunity to correct deficiencies in the petition after a petition is dismissed on the merits. However, if a petition was dismissed because a quota was reached, then appellant may file another petition to expedite an appeal under this

program in the same application under appeal during the next quarter of the program, but both of these filings count towards appellant's petition filing limit.

III. Prosecution of the Application Granted Special Status Under the Pilot Program

A. Replies by the Applicant Under the Pilot Program

The time periods set for reply in Office actions for an application granted special status under the pilot program will be the same as those set forth in section 710.02(b) of the MPEP. A reply to an Office action must be fully responsive to the rejections, objections, and requirements made by the examiner. Any amendment filed in reply to an Office action may be treated as not fully responsive if it attempts to: (1) add claims that would result in more than three independent claims or more than 20 total claims pending in the application; or (2) add any multiple dependent claim(s).

If a reply to a non-final Office action is not fully responsive for failing to comply with the pilot program's claim requirements but is a bona fide attempt to advance the application to final action, the examiner may, at the examiner's discretion, issue a Notice of Non-Responsive Amendment and provide a shortened statutory period of two months for the applicant to supply a fully responsive reply. Extensions of this time period under 37 CFR 1.136(a) to the Notice of Non-Responsive Amendment will be permitted, but in no case can any extension carry the date for reply to this notice beyond the maximum period of six months set by statute (35 U.S.C. 133). However, any further non-responsive amendment typically will not be treated as bona fide, and as such, the time period set in the prior notice will continue to run.

B. After-Final and Appeal Procedures

Any amendment, affidavit, or other evidence after a final Office action and prior to appeal must comply with 37 CFR 1.116. During the appeal process, the application will be treated in accordance with the normal appeal procedure (see MPEP Chapter 1200) unless the appeal is granted special status under this program or another program.

C. Application Cannot Be Withdrawn From the Pilot Program

There is no provision to withdraw an application undergoing expedited examination from the pilot program. An applicant may abandon an application that has been granted special status

under the pilot program in favor of a continuing application. A continuing application will not be granted special status based on the petition filed in the parent application. Each application (including each continuing application) must, on its own merit, meet all requirements for special status under the pilot program, and be accompanied by its own petition as detailed in Part I above.

IV. Conduct of Appeals Accepted Into the Pilot Program

A. Hearings

A petition to participate in the pilot program may be filed for *ex parte* appeals in which the appellant seeks an oral hearing before the PTAB, that is, "heard" appeals, as well as those appeals for which no oral hearing is requested, that is, "on-brief" appeals. Hearings in *ex parte* appeals accorded special status under the pilot program will be conducted according to the standard PTAB hearing procedures. Appellants seeking an oral hearing should submit, along with the request for oral hearing, any preferences as to the time, date, or location of the hearing. The PTAB will make best efforts to schedule a hearing in accordance with such preferences. If the PTAB is unable to accommodate an appellant's preferences, it will schedule the hearing in an available hearing room at any office, including a regional office. An appellant may waive the hearing and continue under the pilot program for consideration and decision on the briefs. An appellant may not reschedule the date or time of a hearing and remain in the pilot program. If an appellant in an *ex parte* appeal accorded expedited status must reschedule the date or time of a hearing and is not willing to waive the oral hearing, then the appellant may opt out of the pilot program, thereby regaining the ability to reschedule or relocate the hearing as per standard PTAB hearing procedures.

B. Termination of Expedited Status of Appeal

Under the pilot program, special status will be maintained in an *ex parte* appeal from the date the petition for inclusion in the pilot program is granted until the PTAB's jurisdiction ends under 37 CFR 41.35(b). Activities subsequent to an appellant's withdrawal from the pilot program or the PTAB's decision, including any reopened prosecution, will not be treated as subject to expedited status, nor will filing a petition to expedite an appeal under the pilot program cause an application to be accorded expedited

status outside the jurisdiction of the PTAB. Additionally, any request by an appellant causing a delay in the conduct of the appeal, such as for an extension of time under 37 CFR 1.136(b) or for additional briefing, will be cause for removal of expedited status.

John A. Squires,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2026-11098 Filed 6-2-26; 8:45 am]

BILLING CODE 3510-16-P

COMMODITY FUTURES TRADING COMMISSION

Policy Statement Concerning the Listing of Perpetual Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Policy statement.

SUMMARY: This policy statement describes the views of the Commodity Futures Trading Commission (the "CFTC" or "Commission") concerning the listing of perpetual contracts. Contemporaneously with the issuance of this policy statement, the Commission has issued an order (the "Order") permitting the listing of a perpetual contract that references the spot price of bitcoin by a designated contract market ("DCM") as a futures contract. Given the unique characteristics of perpetual contracts, which tend to vary based on the underlying asset they reference, the Commission is of the view that the case-by-case review process detailed in Commission Regulation 40.3 is appropriate for the listing of perpetual contracts that reference asset classes that are not contemplated in the Order.

DATES: The Commission's policy statement is adopted as of May 29, 2026.

FOR FURTHER INFORMATION CONTACT: Roger Smith, 202-418-5344, rsmith@cftc.gov, Division of Market Oversight, Commodity Futures Trading Commission, 77 West Jackson Blvd., Suite 800, Chicago, Illinois 60604 or Stephen Andrews, Deputy General Counsel for Regulation, 202-308-7563, sdandrews@cftc.gov, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Perpetual contracts are derivative contracts that have no fixed expiration date, and which rely on a periodic

funding rate mechanism, rather than a fixed expiration date, to maintain relative price parity with the underlying asset's spot price. Perpetual contracts have become a dominant form of crypto derivative trading in global markets. However, given the regulatory uncertainty concerning the appropriate classification of these types of contracts in the U.S. derivatives markets, the market for perpetual contracts has largely developed outside of the United States, with the majority of trading occurring on offshore trading venues.

The Commission has taken a series of steps over the past year to develop a workable domestic framework for these products. On April 21, 2025, Commission staff issued a Request for Comment on the Trading and Clearing of “Perpetual” Style Derivatives (the “Request”).¹ The Request solicited public input on the characteristics, use cases, regulatory classification, and risks of perpetual contracts. The Request was issued in conjunction with a Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis, which sought public input on the operational, surveillance, clearing, and margin implications of extending CFTC-regulated derivatives trading to a continuous basis.²

On July 30, 2025, the President's Working Group on Digital Asset Markets issued its report, *Strengthening American Leadership in Digital Financial Technology* (the “PWG Report”).³ The PWG Report recommended that the Commission and the U.S. Securities and Exchange Commission permit eligible market participants to access derivatives, including perpetual contracts, through regulated intermediaries and that the agencies use existing exemptive and interpretative authorities to provide near-term clarity for innovative derivatives products.

As discussed, this policy statement is being released in conjunction with the Order,⁴ which approved the listing of a perpetual contract that references the spot price of bitcoin by a DCM as a futures contract. The Commission issues this policy statement to articulate, for

the benefit of registrants, market participants, and the public, its view that perpetual contracts that reference underlying asset classes that are not contemplated in the Order⁵ should be submitted for Commission review and approval pursuant to the voluntary product approval process under Commission Regulation 40.3.⁶

This policy statement is a general statement of policy issued under 5 U.S.C. 553(b)(A). It does not impose any obligation on any person, modify or supersede any provision of the Commodity Exchange Act (“CEA”) or the Commission's regulations thereunder, create any right or benefit enforceable at law or in equity, and is not subject to the notice-and-comment requirements of the Administrative Procedure Act. Each contract submitted to the Commission under part 40 will continue to be evaluated on its own terms.

II. The Structural Distinctiveness of Perpetual Contracts

Traditional futures contracts rely primarily on a fixed expiration date to achieve convergence with the underlying asset's spot price. Futures contracts have emerged as a primary instrument in the U.S. derivatives markets for hedgers and traders to effectively secure a price for an asset today in connection with a transaction that will occur in the future. Price convergence with the underlying spot price at expiration is thus inherent to the design of a traditional futures contract and ultimately what makes them a useful instrument for hedging and price discovery.

A perpetual contract has no fixed expiration date through which it can achieve convergence. It therefore requires a substitute mechanism to maintain relative price parity with the underlying spot price of the asset that it references. The mechanism that has emerged in the global crypto asset markets is known as a funding rate, or a periodic payment between the long and short sides of the contract, the direction and magnitude of which is generally determined by the difference

between the perpetual contract's market price and the underlying asset's spot price. When a perpetual contract trades above the spot price, the traders with long positions make payments while the traders with short positions receive payments; and vice versa. These payments are intended to create an economic incentive for market participants to arbitrage away the price differential by opening positions on whichever side of the market is accruing the payments. In this way, the funding rate is designed to keep closely aligned a perpetual contract's price to the underlying asset's price and functions as a replacement to the traditional expiration-based convergence mechanism upon which a futures contract typically relies.

Perpetual contracts raise novel and complex questions relating to market structure, customer protection, resilience during periods of market stress, and consistency with the Core Principles applicable to registrants under the CEA. For example, a perpetual contract's design and characteristics raise important considerations with respect to DCM Core Principle 3, which requires that a DCM list only those contracts that are not readily susceptible to manipulation.⁷ For a traditional, cash-settled futures contract, the susceptibility-to-manipulation analysis directed at the cash settlement reference price is an analysis of one moment in time: the settlement reference price must be reliable at expiry. For a perpetual contract, however, the reference must be reliable at every funding interval, without interruption, for as long as the contract remains active.

It is therefore the Commission's view that perpetual contracts that reference asset classes that are not contemplated in the Order should be submitted for Commission review and approval pursuant to the voluntary product approval process under Commission Regulation 40.3.

The Commission notes that Regulation 40.2 permits registrants to self-certify new products where the submitting registrant determines that the product complies with the CEA and Commission regulations thereunder.⁸ However, given the novel characteristics of perpetual contracts, including their lack of a traditional expiration date and the complex questions concerning, among others, market structure and customer protections, the Commission

¹ CFTC Release No. 9069–25, *Request for Comment on the Trading and Clearing of “Perpetual” Style Derivatives* (April 21, 2025).

² CFTC Release No. 9068–25, *Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis*, (April 21, 2025).

³ President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 30, 2025), available at <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf>.

⁴ See Order Approving KalshiEX LLC BTCPERP Futures Contract, May 29, 2026.

⁵ These types of asset classes include, but are not limited to, agricultural products, precious metals, equity securities, and narrow-based security indexes. Each asset class will raise different considerations and merit independent analysis and review based on their unique circumstances. For example, perpetual contracts are likely particularly ill-suited for agricultural products based on the considerations identified in the Order, while perpetual contracts that reference equity securities or narrow-based security indexes, among others, would benefit from review by the Commission and the U.S. Securities and Exchange Commission.

⁶ 17 CFR 40.3.

⁷ 7 U.S.C. 7(d)(3); see also 17 CFR part 38, app. C.

⁸ 17 CFR 40.2.

believes that the public interest is best served by requiring perpetual contracts that reference assets that are not contemplated in the Order to undergo Commission review and approval pursuant to Commission Regulation 40.3.

III. Submissions Under Commission Regulation 40.3

The Commission believes that the Commission Regulation 40.3 process provides important benefits for regulators, market participants, and the public. Prior review promotes transparency, facilitates engagement between Commission staff and registrants during product development, and provides greater regulatory clarity for market participants and members of the public seeking to responsibly innovate within the CFTC's regulatory framework.

In accordance with the purpose of the CEA, the Commission remains committed to promoting responsible innovation and fair competition in the U.S. derivatives markets.⁹ The Commission believes that clear regulatory pathways and transparent supervisory expectations are essential to ensuring that emerging technologies and novel financial products can develop responsibly within regulated U.S. markets rather than migrating to less regulated jurisdictions outside of the United States.

This policy statement is intended solely to provide the Commission's views concerning the listing of perpetual contracts and does not alter or amend the CEA or the Commission's regulations thereunder. Nothing in this policy statement is intended to be binding or foreclose the possibility that, on appropriate facts and contract design, the Commission might in the future address perpetual contracts through separate policy statements, interpretative guidance, or the rulemaking process; the Commission makes no determination as to that possibility here.

Issued in Washington, DC, on May 29, 2026, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

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

Policy Statement Concerning the Listing of Perpetual Contracts—Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2026–11020 Filed 6–2–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2026–OS–1222]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the 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 August 3, 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, Oversight and Compliance 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 the Office of the Assistant Secretary of War for International Armaments Control, 3010 Defense Pentagon, Washington, DC 20301–3010, Katherine Coyne, 703–545–5899.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: America First Arms Transfer Strategy OMB Control Number 0704–AFAT.

Needs and Uses: Effective execution of Executive Order 14383 requires immediate, up-to-date market intelligence regarding defense articles and the private sector's current production capabilities, supply chain dependencies, product offerings, and export readiness. This information collection is a strategic market research effort to inform execution of Executive Order 14383. It is not an acquisition or procurement action, and no federal contracts will be solicited or awarded based on these submissions. The analysis derived from this collection will facilitate the analytical prioritization of U.S. defense articles, enabling the curation of a comprehensively assessed data set for the Government.

Affected Public: Businesses or other for-profit.

Annual Burden Hours: 375.

Number of Respondents: 150.

Responses per Respondent: 5.

Annual Responses: 750.

Average Burden per Response: 30 minutes.

Frequency: As required.

Dated: May 29, 2026.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–11025 Filed 6–2–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Notice Announcing American History and Civics Education National Activities Program Competition; Correction

AGENCY: Department of Education; Department of Labor.

ACTION: Notice; correction.

⁹ 7 U.S.C. 5(b).

SUMMARY: On May 29, 2026, the Department of Education (ED) published in the **Federal Register** a Competition Announcement Notice (CAN) in which the Employment and Training Administration at the U.S. Department of Labor (DOL) solicited applications in support of the administration of the FY 2026 American History and Civics Education National Activities (AHC–NA) program, Assistance Listing Number 84.422B, on behalf of ED. This notice corrects an error in that CAN.

The CAN published on May 29, 2026, had two email addresses listed for the **FOR FURTHER INFORMATION CONTACT**. ED and DOL are correcting the FY 2026 AHC–NA CAN by removing the second email address to simplify the information contact. All other information in the CAN remains the same.

DATES: *Deadline for Transmittal of Applications:* July 13, 2026.

FOR FURTHER INFORMATION CONTACT: Orman Feres. Phone: (202) 453–6921. Email: Orman.Feres@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: We are correcting the May 29, 2026, CAN to remove the second email address for the information contact as described below:

Correction

In FR Doc. No. 2026–10719, in the **Federal Register** published on May 29, 2026 (91 FR 32018), we make the following correction:

On Page 32018, in the second column, revise the text under **FOR FURTHER INFORMATION CONTACT** as follows:

Orman Feres. Phone: (202) 453–6921. Email: Orman.Feres@ed.gov.

Program Authority: Section 2233 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 6663.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Henry Maklakiewicz signs this notice in furtherance of DOL's role in providing support to ED.

Kirsten Baesler,

Assistant Secretary, Office of Elementary and Secondary Education, Department of Education.

In concurrence.

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Department of Labor.

[FR Doc. 2026–11105 Filed 6–2–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Announcing Fund for the Improvement of Postsecondary Education-Postsecondary Student Success Grants Program Competition

AGENCY: Department of Education (ED), Department of Labor (DOL)

ACTION: Notice.

SUMMARY: The Department of Labor and Department of Education (ED) announce the opportunity to apply for competitive grants for the Fiscal Year (FY) 2026 for the Fund for the Improvement of Postsecondary Education (FIPSE)—Postsecondary Student Success Grants (PSSG) Program, Assistance Listing Number (ALN) 84.116M.

DATES: Complete proposals must be submitted electronically through the *Grants.gov* “APPLY” function by 11:59:59 p.m. Eastern time June 29, 2026.

FOR FURTHER INFORMATION CONTACT: Robyn Wood and Nemeka Mason-Clerc. Email: pssg@ed.gov.

SUPPLEMENTARY INFORMATION: The PSSG Program is designed to improve postsecondary student outcomes, including retention, transfer, credit accumulation, and completion, by leveraging data and implementing, scaling, and rigorously evaluating evidence-based strategies.

The FY 2026 competition includes priorities, selection criteria, and requirements. The priorities are: Early Phase Projects That Demonstrate a Rationale; Mid Phase Projects Supported by Moderate Evidence; Advancing Artificial Intelligence to Support Postsecondary Student Success; Career Pathways and Workforce Readiness; Developing or Expanding High-Quality Short Term Programs; Projects That Support College-to-Career Pathways and Supports; Returning Education to the States; and Innovative, Evidence-Based Financing Models.

Maximum Award: \$4,000,000 (Early Phase) and \$8,000,000 (Mid Phase), for a project period of up to 48 months.

Program Authority: 20 U.S.C. 1138–1138d; the Explanatory Statement accompanying Division B of the Consolidated Appropriations Act, 2026 (Pub. L. 119–75).

To Apply: The complete funding opportunity announcement and all information needed to apply, including all priorities and program requirements, are available on ED's website at <https://www.ed.gov/grants-and-programs/grants-higher-education/improvement-of-postsecondary-education/postsecondary-student-success-grant-pssg-program>, on DOL's website at <https://www.dol.gov/agencies/eta/grants/apply/find-opportunities>, and on *Grants.gov* at <https://www.grants.gov/search-results-detail/362602>. The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Henry Maklakiewicz signs this notice in furtherance of DOL's role in providing support to ED.

David Barker,

Assistant Secretary, Office of Postsecondary Education, Department of Education.

In concurrence.

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Department of Labor.

[FR Doc. 2026–11110 Filed 6–2–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Announcing School Safety Enhancement Program Competition

AGENCY: Department of Education, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Children and Families at the U.S. Department of Health and Human Services (HHS) is soliciting applications in support of the administration of the Fiscal Year (FY) 2026 School Safety Enhancement (SSE) program, Assistance Listing Number 84.184A, on behalf of the U.S. Department of Education (ED).

DATES: Complete proposals must be submitted electronically through the *Grants.gov* “APPLY” function by 11:59:59 p.m. Eastern time July 28, 2026.

FOR FURTHER INFORMATION CONTACT: Nicole White. Telephone: (202) 987-1594. Email: School.Safety@ed.gov.

SUPPLEMENTARY INFORMATION: The School Safety Enhancement (SSE) program provides competitive grants to State educational agencies (SEAs) to develop, implement, and strengthen statewide school safety systems and the physical security of schools consistent with findings outlined in the U.S. Department of Justice (DOJ) report regarding the Robb Elementary School shooting. The SSE program will support States in implementing evidence-based school safety measures, including improving school infrastructure security, strengthening emergency response planning and coordination, and enhancing training and preparedness exercises for school personnel and school resource officers (SROs). The FY 2026 competition includes two absolute priorities, one competitive preference priority, selection criteria, and requirements. The absolute priorities are: (1) Returning Education to the States, and (2) Improving School Safety Systems and Physical Security of Schools. The competitive preference priority is: (1) Rural Applicants.

Eligible Applicants: The following entities are eligible to apply under this competition: State educational agencies (SEAs), as defined in 20 U.S.C. 7801(49).

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281)

To Apply: The complete funding opportunity announcement and all information needed to apply, including the priorities, selection criteria, and requirements, are available on ED's website at <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/safe-and-supportive-schools/school-safety-enhancement-program-84184a> and on [Grants.gov](https://www.grants.gov) at <https://www.grants.gov/search-results-detail/362570>. The application notice and instructions on [Grants.gov](https://www.grants.gov) is the official document governing the grant competition.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Alex J. Adams signs this notice in furtherance of HHS' role in providing support to ED.

Kirsten Baesler,

Assistant Secretary, Office of Elementary and Secondary Education. In concurrence

Alex J. Adams,

Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

[FR Doc. 2026-11103 Filed 6-2-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354-221]

Georgia Power Company; Notice of Application for Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* 2354-221.

c. *Date Filed:* April 6, 2026 and supplemented April 22, 2026.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* North Georgia Project.

f. *Location:* The Project is located on the Savannah River basin on the Tallulah, Chattooga, and Tugaloo Rivers, in Rabun, Habersham, and Stephens counties, Georgia, and Oconee County, South Carolina. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Courtenay O'Mara, 241 Ralph McGill Boulevard NE, BIN 10170, Atlanta, Georgia 30308-3374, 404-506-7219, cromara@southernco.com.

i. *FERC Contact:* Aneela Mousam, (202) 502-8357, aneela.mousam@ferc.gov.

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that

agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* June 29, 2026 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P-2354-221. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* Georgia Power Company (licensee) requests Commission approval to replace the existing flashboards with Obermeyer gates, and construct a control room to house the equipment and instrumentation needed to operate the new Obermeyer gates at the Yonah Development. Replacing the existing flashboards with Obermeyer gates would allow plant operators to regulate reservoir elevations more effectively. The licensee would install the Obermeyer gates behind a bulkhead; therefore, no drawdown would be required. The proposed spillway upgrades are anticipated to begin in 2027 and are expected to take 18 to 24

months. The proposed upgrades would not result in any ground disturbance, and laydown areas for staging the spillway gates would be on previously disturbed and graveled areas. The project would continue to operate under the terms of its current license, and applicable Water Quality Certification.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; and (3) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. 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*.

(Authority: 18 CFR 2.1)

Dated: May 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-11088 Filed 6-2-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8405-024]

Green Mountain Power Corporation; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 8405-024.

c. *Date Filed:* February 27, 2025.

d. *Applicant:* Green Mountain Power Corporation (Green Mountain Power).

e. *Name of Project:* Glen Hydroelectric Project.

f. *Location:* The existing project is located on the Mascoma River in Grafton County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John Tedesco, Generation Project Coordinator, Green Mountain Power Corporation, 163 Acorn Lane Colchester, VT 05446; Phone at (802) 655-8753, or email at John.Tedesco@greenmountainpower.com.

i. *FERC Contact:* Steve Kartalia at (202) 502-6131, or stephen.kartalia@ferc.gov.

j. *Deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* on or before July 28, 2026, by 5:00 p.m. Eastern Time; Deadline for filing reply comments: September 11, 2026, by 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>.

Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. 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. All filings must clearly identify the project name and docket number on the first page: Glen Hydroelectric Project (P-8405-024).

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The existing Glen Project consists of a 173-foot-long, 14-foot-high concrete gravity dam equipped with 3-foot-high flashboards with a crest elevation of 413.2 feet National Geodetic Vertical Datum of 1929 (NGVD 29) at the top of the flashboards. The dam creates an impoundment with a surface area of approximately 7 acres at an elevation of 413.2 feet NGVD 29. The project also comprises (1) an intake structure that includes two headgates equipped with a trashrack with 2-inch clear bar spacing; (2) a 4,100-foot-long, 8- to 8.5-foot-diameter penstock; (3) a powerhouse containing a 685-kilowatt (kW) regulated propeller bulb turbine-generator unit and two 400-kW fixed propeller bulb turbine-generator units for a total installed capacity of 1,485 kW; (4) an approximately 34-foot-long, 30-foot-wide, 8-foot-deep tailrace; (5) a 50-foot-long underground transmission line that leads to a 2.4/13.2-kilovolt step-up transformer where the project is connected to the local electric grid; and (6) appurtenant facilities. The project creates an approximately 4,300-foot-

long bypassed reach of the Mascoma River.

The current license requires Green Mountain Power to operate the project in “instantaneous” run-of-river mode, so that project outflow approximates inflow to the impoundment. To protect aquatic resources in the Mascoma River, the current license also requires that Green Mountain Power release a continuous minimum flow of 40 cubic feet per second (cfs) or inflow to the impoundment, whichever is less, from the project to the bypassed reach, as measured immediately downstream from the project dam. Green Mountain Power releases the minimum flow through a 20-inch minimum flow pipe that protrudes from the penstock immediately downstream of the project’s intake structure. The average annual generation of the project between 2012 through 2024 was approximately 2,782 megawatt-hours.

Green Mountain Power propose to: (1) continue operating the project in a run-of-river mode; (2) continue releasing a continuous minimum flow of 40 cfs or inflow to the impoundment, whichever is less, from the project to the bypassed reach; (3) develop an operations compliance monitoring plan; (4) avoid tree removal of all trees greater than 3 inches in diameter at breast height on project lands from April 15 through October 31, to minimize potential impacts to northern long-eared and tricolored bats; and (5) develop an historic properties management plan.

m. A copy of the application is available for review on the Commission’s website at <https://www.ferc.gov> using the “eLibrary” link. Enter the project’s docket number excluding the last three digits in the docket number field to access the document (P–8405). For assistance, contact FERC at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or TTY (202) 502–8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission’s Rules may become a party to the proceeding. Any comments, protests, or

motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title “PROTEST,” “MOTION TO INTERVENE,” “COMMENTS,” “REPLY COMMENTS,” “RECOMMENDATIONS,” “PRELIMINARY TERMS AND CONDITIONS,” or “PRELIMINARY FISHWAY PRESCRIPTIONS;” (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. 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.

p. The applicant must file the following on or before 5:00 p.m. Eastern Time on July 28, 2026: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of a waiver of water quality certification.

q. Final amendments to the application must be filed with the Commission on or before 5:00 p.m. Eastern Time on June 29, 2026.

(Authority: 18 CFR 2.1)

Dated: May 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–11087 Filed 6–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–552–000]

Algonquin Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Cape Cod Canal Pipeline Relocation Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Cape Cod Canal Pipeline Relocation Project proposed by Algonquin Gas Transmission, LLC (Algonquin) in the above-referenced docket.¹ Algonquin requests authorization to modify its existing interstate natural gas pipeline system facilities within the Town of Bourne, Barnstable County, Massachusetts, to accommodate the Massachusetts Department of Transportation’s planned replacement of the Bourne Bridge and Sagamore Bridge by the Cape Cod Canal Bridges Program.² The purpose of Algonquin’s proposed project is to accommodate the replacement of the Bourne Bridge and Sagamore Bridge while continuing to provide uninterrupted natural gas service to the National Grid distribution system on both sides of the Cape Cod Canal.

Any person wishing to comment on the EA may do so. To ensure consideration of your comments on the proposal prior to making a decision on the project, it is important that the Commission receive your comments on or before 5:00pm Eastern Time on June 29, 2026. Instructions for filing comments are provided on page 3.

FERC is the lead federal agency for authorizing interstate natural gas transmission facilities under the Natural Gas Act of 1938 (NGA) and the lead federal agency for preparation of the EA. The EA assesses the potential environmental effects of the Cape Cod Canal Pipeline Relocation Project in accordance with the requirements of the National Environmental Policy Act

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1763050824.

² The Cape Cod Canal Bridges Program is being undertaken by the Massachusetts Department of Transportation to improve cross-canal mobility and accessibility between Cape Cod and mainland Massachusetts and to address the increasing maintenance needs and functional obsolescence of the aging Sagamore and Bourne Highway Bridges (<https://www.mass.gov/info-details/program-background-cape-cod-bridges-program>).

(NEPA)³ and the Commission's implementing regulations.⁴ The principal purposes of the EA are to: identify and assess the potential effects on the natural and human environment; describe and evaluate reasonable alternatives; identify and recommend mitigation measures; and facilitate public involvement in the environmental review process. The EA concludes that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and the Massachusetts Army National Guard participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Army Corps of Engineers will adopt and use the EA to consider the issuance of authorizations under Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code [U.S.C.] Section 403), Section 404 of the Clean Water Act (33 U.S.C. 1344), Section 408 of the River and Harbors Act of 1899 (33 U.S.C. 408), and real estate outgrants for the portion of the project on its property. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EA, the agencies will present their own conclusions and recommendations in their respective Record of Decisions for the project.

The EA addresses the potential environmental effects of the construction and operation, and abandonment of the following project facilities:

- Abandonment by removal of 0.61 mile of existing 8-inch-diameter G-8C pipeline; 0.61 mile of existing 8-inch-diameter G-8L pipeline; 0.31 mile of existing 8-inch-diameter G-11 pipeline; 0.49 mile of existing 18-inch-diameter G-24 pipeline; and two existing metering & regulating (M&R) stations, including tie-ins—Sagamore M&R Station and Bourne M&R Station.

- Abandonment in place of 0.72 mile of existing 8-inch-diameter G-8C pipeline and 0.72 mile of existing 8-inch-diameter G-8L pipeline.

- Construction of 0.43 mile of 8-inch-diameter G-11 pipeline and 0.66 mile of 18-inch-diameter G-24 pipeline

(relocated lines to the segments of existing G-11 and G-24 pipelines that would be abandoned); 3.03 miles of 16-inch-diameter G-32 pipeline and 2.17 miles of 18-inch-diameter G-31 pipeline to replace National Grid's existing pipelines currently attached to the existing Bourne and Sagamore Bridges; four new M&R stations—Pave Paws Road M&R Station, Bourne Rotary M&R Station, and relocated Sagamore M&R Station and Bourne M&R Station; and 60 feet of 8-inch-diameter G-8L pipeline and 20 feet of 6-inch-diameter G-8C pipeline to tie into the new Bourne M&R Station.

- Expansion of one existing valve site at the origin of the G-31 pipeline.

- Installation of pig launchers and receivers on the G-31 and G-32 pipelines, and at the reconfigured terminus points of the G-11, G-8C, and G-8L pipelines.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; Native American tribes; environmental and public interest groups; potentially affected landowners and other interested individuals and groups; and media outlets and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.* CP25-552). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Under section 7(c) of the NGA, the Commission determines whether interstate natural gas transportation facilities are in the public convenience and necessity and, if so, grants a Certificate of Public Convenience and Necessity to construct and operate them. Section 7(b) of the NGA specifies that no natural gas company shall abandon any portion of

its facilities subject to the Commission's jurisdiction without the Commission first finding that the abandonment will not negatively affect the present or future public convenience and necessity. The Commission bases its decisions on both economic issues, including need, and environmental effects.

Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental effects. The more specific your comments, the more useful they will be. For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP25-552-000) on your letter. 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing

³ National Environmental Policy Act of 1969, as amended (Public Law [Pub. L.] 91-190, 42 U.S.C. 4321-4347, as amended by Pub. L. 94-52, July 3, 1975; Pub. L. 94-83, August 9, 1975; Pub. L. 97-258, § 4(b), September 13, 1982; Pub. L. 118-5, June 3, 2023; Pub. L. 119-21, July 4, 2025).

⁴ 18 Code of Federal Regulations (CFR) 380.

timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

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. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

(Authority: 18 CFR 2.1)

Dated: May 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-11090 Filed 6-2-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3267-021]

ECOsponsible, LLC; Notice of Proposed Termination of License by Implied Surrender and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric proceeding has been initiated by the Commission and is available for public inspection:

a. *Type of Proceeding*: Proposed Termination of License by Implied Surrender.

b. *Project No*: P-3267-021.

c. *Date Initiated*: May 29, 2026.

d. *Applicant*: ECOsponsible, LLC.

e. *Name of Project*: Ballard Mill Hydroelectric Project.

f. *Location*: The project is located on the Salmon River, in Malone, Franklin County, New York.

g. *Filed Pursuant to*: 18 CFR 6.4.

h. *Applicant Contact*: Dennis J. Ryan, P.O. Box 114, West Falls, NY, 14170, 716-655-3524, eco14052@gmail.com.

i. *FERC Contact*: Diana Shannon, (202) 502-6136, diana.shannon@ferc.gov.

j. *Resource Agency Comments*: Federal, state, local and Tribal agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

k. *Deadline for filing comments, motions to intervene, and protests*: July 13, 2026, 5:00 p.m. Eastern Time

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-3267-021. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project Facilities*: As described in the license, the project works include: (1) a timber and concrete gravity overflow-type dam approximately 200 feet long and about

10 feet high extending across the main channel with a crest elevation of 696 feet and a sluice control structure at each abutment; (2) a reservoir having a surface area of approximately 10 acres and a storage capacity of 50 acre-feet; (3) a powerhouse extending across the east (right) channel containing two generating units having a combined total rated capacity of 275 kilowatts; (4) a tailrace channel; and (5) appurtenant facilities.

m. *Description of Proceeding*: On April 19, 1982, the Commission issued a license for the project to Greater Malone Community Council, Inc., which expired on March 31, 2022. On October 5, 2017, the license was transferred to ECOsponsible, LLC. On March 31, 2020, ECOsponsible, LLC, filed an application for a subsequent minor license. On April 7, 2021, the Commission rejected the license application. ECOsponsible, LLC, did not seek rehearing of that order. On September 23, 2021, Commission staff directed ECOsponsible, LLC, to file a plan and schedule to file a surrender application within 60 days, noting that the license application was rejected. On March 15, 2022, Commission staff again requested the licensee to file a surrender application. No responses were filed. The project is currently operating under annual license issued on April 5, 2022. The project has not operated since 2010.

Standard Article 16 states that if a licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful order of the Commission mailed to the record address of the licensee or its agent, the Commission will deem it to be the intent of a licensee to surrender the license.

Given that the project has not operated since 2010 and the lack of response to Commission staff's letters dated September 23, 2021, and March 15, 2022, Commission staff are initiating this implied surrender proceeding.

n. *Location of the Order Issuing License*: The order may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or

email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

r. 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.

(Authority: 18 CFR 2.1)

Dated: May 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-11089 Filed 6-2-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 620-025]

City of Chignik; Notice of Intent To Prepare an Environmental Assessment

On March 2, 2026, the City of Chignik, Alaska (licensee) filed an application to surrender its license for the Chignik Project No. 620. The project is located on Indian Creek in the City of Chignik in the Lake and Peninsula Borough, Alaska. The project does not occupy federal lands.

The Chignik Project has not generated power since approximately 2012. With the support of funding from the Alaska Native Tribal Health Consortium and the Lake and Peninsula Borough, the City of Chignik has determined that surrendering the license for the existing project and developing a replacement water supply line and hydroelectric facility, under state jurisdiction, is in the best interest of the community. On January 22, 2026, Commission staff issued an order determining that a license would not be required for the redeveloped project (194 FERC ¶ 62,031). A Notice of Application for Surrender of License Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests was issued on March 18, 2026. No comments were filed pursuant to the notice.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for the project.¹ Commission staff plans to issue an EA by August 25, 2026. Revisions to the schedule may be made as appropriate. The EA will be issued for a 30-day comment period. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

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.

Any questions regarding this notice may be directed to Rebecca Martin at 202-502-6012 or Rebecca.martin@ferc.gov.

(Authority: 18 CFR 2.1)

¹ The unique identification number for documents relating to this environmental review is EAXX-019-20-000-1777913740.

Dated: May 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-11086 Filed 6-2-26; 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: EG26-250-000.

Applicants: Bear Branch Solar, LLC.

Description: Bear Branch Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/29/26.

Accession Number: 20260529-5042.

Comment Date: 5 p.m. ET 6/22/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER26-302-001.

Applicants: Startrans IO, LLC.

Description: Compliance filing: Startrans IO TRR and TRBAA Filing to be effective 6/1/2026.

Filed Date: 5/29/26.

Accession Number: 20260529-5261.

Comment Date: 5 p.m. ET 6/22/26.

Docket Numbers: ER26-1707-001.

Applicants: Sierra Pacific Power Company, Nevada Power Company.

Description: Compliance filing: Nevada Power Company submits tariff filing per 35: Compliance Filing ER26-1707 (OATT Amendments) to be effective 5/10/2026.

Filed Date: 5/29/26.

Accession Number: 20260529-5140.

Comment Date: 5 p.m. ET 6/22/26.

Docket Numbers: ER26-1962-001.

Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC, Entergy Arkansas, LLC.

Description: Tariff Amendment: Entergy Arkansas, LLC submits tariff filing per 35.17(b): 2026-05-29 Amendment to Entergy Companies ADIT Functionalization to be effective 6/1/2026.

Filed Date: 5/29/26.

Accession Number: 20260529-5239.

Comment Date: 5 p.m. ET 6/22/26.

Docket Numbers: ER26-2116-001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2026-05-29 SA 4738 METC-River Fork Storage Substitute GIA (S1058) to be effective 4/2/2026.

Filed Date: 5/29/26.
Accession Number: 20260529–5073.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2295–001.
Applicants: Lansing Board of Water and Light.
Description: Amended Request for Limited and Prospective Tariff Waiver, et al. of Lansing Board of Water and Light.
Filed Date: 5/28/26.
Accession Number: 20260528–5292.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2678–000.
Applicants: Escalante Solar II, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to be effective 5/29/2026.
Filed Date: 5/28/26.
Accession Number: 20260528–5260.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2679–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, Service Agreement No. 4747; Queue No. AC1–061 to be effective 6/1/2024.
Filed Date: 5/28/26.
Accession Number: 20260528–5263.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2680–000.
Applicants: Escalante Solar III, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to be effective 5/29/2026.
Filed Date: 5/28/26.
Accession Number: 20260528–5266.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2681–000.
Applicants: Escalante BESS I LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to be effective 5/29/2026.
Filed Date: 5/28/26.
Accession Number: 20260528–5272.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2682–000.
Applicants: Bear Branch Solar, LLC.
Description: Initial Rate Filing: Application for Market Based Rate to be effective 7/12/2026.
Filed Date: 5/28/26.
Accession Number: 20260528–5284.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2683–000.
Applicants: Entergy Texas, Inc.
Description: § 205(d) Rate Filing: ETI–SHECO WDS Agreement to be effective 6/1/2026.
Filed Date: 5/28/26.
Accession Number: 20260528–5288.
Comment Date: 5 p.m. ET 6/18/26.
Docket Numbers: ER26–2684–000.
Applicants: Entergy Texas, Inc.
Description: § 205(d) Rate Filing: ETI–ETEC Third Revised LBA Agreement to be effective 6/1/2026.

Filed Date: 5/29/26.
Accession Number: 20260529–5001.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2687–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6881; Project Identifier No. AF2–445A to be effective 7/29/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5130.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2688–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: June 2025 Membership Filing to be effective 5/1/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5134.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2689–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: Limited Modifications to Formula Rate to be effective 6/1/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5219.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2690–000.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: § 205(d) Rate Filing: Revised Wholesale Power Contract—Rate Schedule FERC No. 8 to be effective 6/1/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5221.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2691–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: Revisions to Attachment F–2 to Joint OATT to be effective 8/1/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5227.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2693–000.
Applicants: Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Services, LLC, Entergy Arkansas, LLC.
Description: § 205(d) Rate Filing: Entergy Arkansas, LLC submits tariff filing per 35.13(a)(2)(iii): MSS–4R NDTF Amendment to be effective 8/1/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5266.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2695–000.
Applicants: Aron Energy Prepay 70 LLC.
Description: Initial Rate Filing: Baseline new to be effective 5/30/2026.

Filed Date: 5/29/26.
Accession Number: 20260529–5291.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2696–000.
Applicants: Aron Energy Prepay 73 LLC.
Description: Initial Rate Filing: Baseline new to be effective 5/30/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5295.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2697–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 1442; Queue No. NQ–123 to be effective 4/22/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5327.
Comment Date: 5 p.m. ET 6/22/26.
Docket Numbers: ER26–2698–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205: Proposed Revisions re: Interconnection Process Improvements to be effective 7/29/2026.
Filed Date: 5/29/26.
Accession Number: 20260529–5332.
Comment Date: 5 p.m. ET 6/22/26.
 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: May 29, 2026.
Carlos D. Clay,
Deputy Secretary.
 [FR Doc. 2026–11073 Filed 6–2–26; 8:45 am]
BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION**Sunshine Act Meetings**

TIME AND DATE: 10 a.m., Thursday, June 11, 2026.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select “Newsroom,” then select “Events.” From there, access the linked “Instructions for board meeting visitors” and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of May 14, 2026, Minutes
- Quarterly Report on Economic Conditions and Farm Credit System Condition and Performance
- Semiannual Report on Office of Examination Operations

CONTACT PERSON FOR MORE INFORMATION:

If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2026–11095 Filed 6–1–26; 4:15 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION**Privacy Act of 1974; System of Records**

AGENCY: Farm Credit Administration.

ACTION: Notice of modified systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is given that the Farm Credit Administration (FCA or Agency) is modifying language under the Policies and Practices for Storage of Records and the Administrative, Technical, and Physical Safeguards sections for the systems of records identified in the list below. The amended sections outlined in this notice reflect non-substantive changes to existing FCA SORNs. The changes to the Policies and Practices for Storage of Records and the Administrative, Technical, and Physical Safeguards sections of the included SORNs reflect FCA’s transition from legacy paper records to electronic records in accordance with guidance provided by the National Archives and Records Administration. Transitioning from paper to electronic records in the referenced systems of records does not modify or otherwise impact “the process by which individuals can exercise their rights under the statute” or “create substantially greater access to” information in the systems.

However, in the interest of transparency, the Agency is providing notice of these changes to the included systems of records.

FOR FURTHER INFORMATION CONTACT:

Jackie Baker, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4148, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: FCA is proposing two non-substantive changes to the Policies and Practices for Storage of Records and Administrative, Technical, and Physical Safeguards sections of the SORNs listed below.

SYSTEM NAME AND NUMBER:

The systems of records to be modified by including the new language in the Policies and Practices for Storage of Records and the Administrative, Technical and Physical Safeguards sections of the SORNs as described in this notice are set forth below. The “Federal Register Citation” column designates the last publication of the complete document in the **Federal Register**. Any history prior to the last publication in the **Federal Register** is omitted for clarity.

SORN No.	SORN name	Federal Register citation
FCA–2	Financial Management Records—FCA	85 FR 55848
FCA–3	Property Accountability Records—FCA	85 FR 46095
FCA–8	FCA Internet Access System—FCA	85 FR 51430
FCA–13	Correspondence Files—FCA	85 FR 49370
FCA–15	General Training Records—FCA	85 FR 46097
FCA–16	Examiner Training and Education Records—FCA	88 FR 33876
FCA–17	Organization Locator and Personnel Roster System—FCA	85 FR 46100

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

This modification notice does not alter the system location information for each of the listed systems. The system location for each system is described in the system’s corresponding SORN located here: <https://www.fca.gov/required-notices/privacy-program/>.

SYSTEM MANAGER(S):

This modification notice does not alter the system manager for each of the listed systems. The system manager for each system is described in the system’s corresponding SORN located here:

<https://www.fca.gov/required-notices/privacy-program/>.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

FCA is modifying the policies and practices for storage of records for each system listed in this notice as follows:

Record are maintained electronically in a computerized database.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA is modifying the administrative, technical, and physical safeguards for each system listed in this notice as follows:

FCA implements multiple layers of security to ensure access to records is

limited to those with need-to-know in support of their official duties. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures.

HISTORY:

See System Names and Numbers above.

Ashley Waldron,

Secretary to the Board, Farm Credit Administration.

[FR Doc. 2026–11083 Filed 6–2–26; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than July 3, 2026.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Community Bancshares of Mississippi, Inc., Employee Stock Ownership Plan, Flowood, Mississippi*; to acquire additional voting shares, up to 19.24 percent, of Community Bancshares of Mississippi, Inc., and thereby indirectly acquire voting shares

of Community Bank of Mississippi, both of Flowood, Mississippi.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,
Associate Secretary of the Board.

[FR Doc. 2026-11100 Filed 6-2-26; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of modified systems of records.

SUMMARY: The FTC is making technical revisions to one of the notices that it has published under the Privacy Act of 1974 to describe its systems of records. This action is intended to make the notice clearer, more accurate, and up-to-date.

DATES: This notice shall become final and effective on June 3, 2026.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-3355 or rgold@ftc.gov.

SUPPLEMENTARY INFORMATION: To inform the public, the FTC publishes in the **Federal Register** and posts on its website a "system of records notice" (SORN) for each system of records that the FTC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a ("Privacy Act" or "Act"). See <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems>. The Privacy Act protects records about individuals in systems of records collected and maintained by Federal agencies. (A system is not a "system of records" under the Act unless the agency maintains and retrieves records in the system by the relevant individual's name or other personally assigned identifier.) Each Federal agency, including the FTC, must publish a SORN that describes the records maintained in each of its Privacy Act systems, including the categories of individuals that the records in the system are about, where and how the agency maintains these records, and how individuals can find out whether an agency system contains any records about them or request access to their records, if any. The FTC, for example, maintains 39 systems of records under the Act. Some of these systems contain records about the FTC's own employees,

such as personnel and payroll files. Other FTC systems contain records about members of the public, such as public comments, consumer complaints, or phone numbers submitted to the FTC's Do Not Call Registry.

Based on a periodic review of its SORNs, the FTC is publishing these additional technical revisions to the SORN for FTC-IV-1 (Consumer Information System—FTC) to ensure that this SORN remains clear, accurate, and up-to-date. This SORN covers consumer reports, complaints, and information requests received from consumers, as well as identity theft and TakeItDown complaints.¹ The Commission has updated the sections relating to the Purpose of the System, Categories of Records in the System, and Policies and Practices for Storage of Records.

The FTC is not substantively adding or amending any routine uses of its Privacy Act system records. Accordingly, the FTC is not required to provide prior public comment or notice to the Office of Management and Budget (OMB) or Congress for these technical amendments, which are final upon publication. See 5 U.S.C. 552a(e)(11) and 552a(r); OMB Circular A-108 (2016) (which reorganized the format and content for SORNs published by Federal agencies). The FTC is reprinting the entire text of this amended SORN for the public's benefit, to read as follows:

* * * * *

IV. Correspondence Systems of Records

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SYSTEM NAME AND NUMBER:

Consumer Information System—FTC (FTC-IV-1).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. This system is operated off-site by a contractor. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems> and at 87 FR 57698 (Sept. 21, 2022).

SYSTEM MANAGER(S):

Assistant Director, Division of Consumer Response and Operations,

¹ Under the Take It Down Act of 2025, consumers may report an online platform for failing to remove within 48 hours an intimate image that was posted without their consent.

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: SORNS@ftc.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 et seq.; section 5 of the Identity Theft and Assumption Deterrence Act of 1998 (ITADA), 18 U.S.C. 1028 note.

PURPOSE(S) OF THE SYSTEM:

To maintain records of complaints and inquiries from individual consumers; to track and respond to such communications (e.g., providing information to consumers over the phone or fulfilling requests by consumers to be mailed copies of FTC publications); identify consumer problems and issues that may lead to law enforcement investigations, litigation, or other proceedings; to be used in and made part of the records of such proceedings, or to be referred to other persons, entities, or authorities, where appropriate, covered by other Privacy Act system of records notices; and to provide statistical data on the number and types of complaints or other communications received by the FTC. Also, to satisfy the requirement of the ITADA that the FTC compile and refer identity theft complaints to “appropriate entities,” and to provide useful information that may contribute to regulation and oversight of institutions and systems that play a role in or are affected by fraudulent business practices or identity theft.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individual consumers who submit complaints to the FTC about identity theft, or the business practices of a company or individual, as well as consumers who request information or assistance.

(2) Individuals who submit their complaints about identity theft or the business practices of a company or individual to another organization that has agreed to provide its consumer complaint information to the FTC.

(3) Individuals acting on behalf of another consumer to submit the other consumer's complaint about identity theft, or the business practices of a company or individual, or to request information or assistance on behalf of another individual.

(4) Individuals who are the subjects of complaints about identity theft or about the business practices of a company or individual.

(5) FTC or contractor staff assigned to process or respond to such communications.

(6) Other system users outside the FTC (e.g., law enforcement agencies authorized to have access to the system under confidentiality agreements).

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personally identifying information about the individual who submits a complaint or requests information or assistance, including, for example, the individual's name, address, telephone number, fax number, date of birth, age range, Social Security or credit card numbers, email address, and other personal information extracted or summarized from the individual's complaint.

(2) Personally identifying information about the individual who submits a complaint or requests information or assistance on behalf of someone else, including, for example, the submitting individual's name, address, age range, phone or fax number, and email address.

(3) The name, address, telephone number, or other information about an individual who is the subject of a complaint, or is allegedly associated with the subject of a complaint. (Information in the system about companies or other non-individuals is not covered by the Privacy Act.)

(4) The name and reference number of FTC or contractor staff person who entered or updated the complaint information in the database.

(5) Name, organization, and contact data for system users outside the FTC (e.g., staff of other authorized law enforcement agencies).

RECORD SOURCE CATEGORIES:

Consumers and entities who communicate with the FTC; FTC staff and contractors; other law enforcement agencies and non-FTC organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Consumer complaints can be disclosed to the subject of the complaint for purposes of attempting to resolve the complaint;

(2) Identity theft complaints also can be disclosed to the three major national credit reporting agencies and other appropriate entities to fulfill the requirements of section 5 of the ITADA; and

(3) Contact data for non-FTC users of this system (e.g., staff of authorized law enforcement agencies) can be shared among such users or with others within or outside the FTC to enable them to communicate with one another.

For other ways that the Privacy Act permits the FTC to use or disclose

system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems> and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The FTC uses several applications or components to collect and share consumer data. The FTC maintains a Consumer Response Center (CRC), which gathers, processes, and updates consumer information submitted by consumers via telephone-based services and internet-based complaint forms. Consumers access a multi-channel bilingual (English and Spanish) contact center to file complaints, report instances of identity theft, receive and print an identity theft report, and request or receive consumer education materials. Consumers may also file complaints directly from their computers and mobile devices using the online ReportFraud portal, which asks consumers to answer a series of questions organized into a few simple steps. The portal can be accessed from the URLs [Reportfraud.ftc.gov](https://www.reportfraud.ftc.gov) and www.ftc.gov/complaint. Consumers may file an identity theft report on [identitytheft.gov](https://www.identitytheft.gov) and report Do Not Call violations at [donotcall.gov](https://www.donotcall.gov). Consumers may report an online platform at [Takeltdown.ftc.gov](https://www.takeltdown.ftc.gov) for failing to remove within 48 hours an intimate image that was posted without their consent. Consumers with cross-border e-commerce complaints may file an online complaint at www.econsumer.gov, which offers cross-border consumer protection information and an additional separate online cross-border complaint form. Finally, consumers may contact the CRC through postal mail. The FTC also receives data collected by other entities. External contributors include a broad array of public and private domestic and foreign organizations. Data from such communications are entered into a structured electronic database maintained by a contractor on the agency's behalf, and accessible by Web-based interface to FTC staff, contractors, and other authorized users (e.g., Federal, State, local, and international law enforcement) subject to strict access and security controls (see “Safeguards” below).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved and indexed by any category of data that is submitted

by consumers or otherwise compiled in association with such records (e.g., name, subject of the complaint).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with Schedule DAA-0122-2021-0002, which was approved by the National Archives and Records Administration. Consumer complaint entries are generally destroyed when they are 5 years old except when they are subject to litigation holds to preserve complaints.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system can currently be accessed by FTC staff, contractors, and other system users, such as authorized law enforcement agency personnel. This access occurs via a Web-based interface and is authorized only on a need-to-know basis to those individuals and organizations requiring access. Contractors and other non-FTC users must sign confidentiality and nondisclosure agreements and, in some cases, are required to undergo additional security clearance procedures. Letters or other system records in paper format are maintained in lockable rooms and cabinets. Access to the electronic database requires users to have the correct "user ID" and password combination, individual security token code, and internet protocol ("IP") address for the user's law enforcement agency. The system database is maintained on secure servers, protected by firewalls, access and usage logs, and other security controls. Servers are maintained in a secure physical environment, including building locks, security guards, and cameras.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems> and at 73 FR 33592, 33634 (June 12, 2008). Individuals who call the FTC's Consumer Response Center can also use their FTC reference number to identify complaints they have previously submitted in order to update them.

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at [https://www.ftc.gov/about-ftc/foia/foia-reading-](https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems)

[rooms/privacy-act-systems](https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems) and at 73 FR 33592, 33634 (June 12, 2008). Individuals who call the FTC's Consumer Response Center can also use their FTC reference number to identify complaints they have previously submitted in order to update them.

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems> and at 73 FR 33592, 33634 (June 12, 2008). Individuals who call the FTC's Consumer Response Center can also use their FTC reference number to identify complaints they have previously submitted in order to update them.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system relating to identity theft are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, and the corresponding provisions of 16 CFR 4.13. See FTC Rules of Practice § 4.13(m), 16 CFR 4.13(m).

HISTORY:

89 FR 79598-79610 (September 30, 2024).

73 FR 33591-33634 (June 12, 2008).

* * * * *

Joel Christie,

Acting Secretary.

[FR Doc. 2026-11114 Filed 6-2-26; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2022-N-2390]

Vanda Pharmaceuticals, Inc.; Grant of Hearing Request Regarding a Proposal To Refuse To Approve a Supplemental New Drug Application for HETLIOZ (Tasimelteon)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a formal evidentiary public hearing on the proposal to refuse to approve the supplemental new drug application (sNDA) 205677-004, submitted by Vanda Pharmaceuticals

Inc. (Vanda) for HETLIOZ (tasimelteon) capsules, 20 milligrams (mg), to treat jet lag disorder. On October 11, 2022, the Director of FDA's Center for Drug Evaluation and Research (CDER) published a notice of opportunity for hearing on a proposal to refuse to approve sNDA 205677-004. Vanda submitted a timely request for hearing on that proposal. This notice of hearing provides factual and legal information concerning CDER's proposal to refuse to approve sNDA 205677-004 and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: A prehearing conference will be held on July 20, 2026, beginning at 10 a.m. Eastern Daylight Time. Any person wishing to participate in this hearing shall submit a written notice of participation by July 6, 2026. Disclosure of data and information as required by 21 CFR 12.85(b) must be made by August 3, 2026.

ADDRESSES: You may submit a written notice of participation and data and information required under 21 CFR 12.85 by either of the following methods:

Electronic Submissions

Submit electronically in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting information. Information submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your information will be made public, you are solely responsible for ensuring that your information does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your information, that information will be posted on <https://www.regulations.gov>.

- If you want to submit any information with confidential information that you do not wish to be made available to the public, submit the information as a written/paper submission and in the manner detailed (see "Written/Paper Submission" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper submissions sent to the Dockets Management Staff, FDA will post your submission, as well as any attachments, except for the information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2022-N-2390 for “Vanda Pharmaceuticals, Inc.; Grant of Hearing Request Regarding a Proposal to Refuse to Approve a Supplemental New Drug Application for HETLIOZ (Tasimelteon).” Received submissions will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To make a submission with confidential information that you do not wish to be made publicly available, send your submissions only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of any decisions on this matter. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your submissions and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of information to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the

“Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

DAB E-File: Beginning on the date of this notice, parties to the hearing and participants should make submissions related to this hearing to Departmental Appeals Board electronic filing system (DAB E-File) at: <https://dab.efile.hhs.gov/>, except insofar as they are submitting initial notices of participation or disclosing data and information pursuant to 21 CFR 12.85. Submissions to DAB E-File by parties and participants must conform to the Case Development Order (Ref. 1) and other orders issued by the presiding officer. Although certain regulations in 21 CFR part 12 require submissions for hearing matters to be filed with the Dockets Management Staff, FDA will deem a submission made by a party or participant to DAB E-File that conforms to the presiding officer’s orders and this notice to satisfy any such applicable requirement and will make the submission available on the docket (see “Docket”). Non-parties and non-participants should continue to make submissions through Dockets Management Staff, as detailed in “Electronic Submissions” and “Written/Paper Submissions.” The record will continue to be accessible at <https://www.regulations.gov> or through the Dockets Management Staff, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Karen Fikes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 1, Rm. 4218, Silver Spring, MD 20993, 301-796-9603.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2014, FDA approved new drug application 205677 for HETLIOZ (tasimelteon) for treatment of non-24-hour sleep-wake disorder, a circadian-rhythm disorder that disproportionately afflicts individuals who are totally blind. On October 16, 2018, Vanda submitted sNDA 205677-004, which seeks approval of HETLIOZ (tasimelteon) to treat jet lag disorder. On August 16, 2019, in accordance with 21 CFR 314.10(a), CDER issued a complete response letter notifying Vanda of its determination that sNDA 205677-004 is not approvable in its current form.

On June 30, 2022, Vanda requested an opportunity for a hearing under 21 CFR 314.110(b)(3) on whether there are grounds under section 505(d) of the Federal Food, Drug, and Cosmetic Act

(FD&C Act) (21 U.S.C. 355(d)) for denying approval of sNDA 205677-004 for the treatment of jet lag disorder. On August 29, 2022, by registered mail, CDER notified Vanda of an opportunity for hearing on a proposal to refuse to approve sNDA 205677-004. On October 11, 2022, FDA published a notice of opportunity for hearing on the proposal to refuse approval (NOOH) in the **Federal Register** (87 FR 61337). On November 10, 2022, Vanda filed a notice of participation and requested a hearing and, on December 12, 2022, submitted information, data, and analyses in support of that request. On June 12, 2023, CDER submitted a proposed order denying Vanda’s request for a hearing and refusing to approve the sNDA. On August 11, 2023, Vanda responded to CDER’s proposed order. On September 8, 2023, CDER submitted a reply, which included a revised proposed order.

After considering the parties’ submissions, FDA issued a decision on March 1, 2024, denying Vanda’s request for a hearing and refusing to approve sNDA 205677-004. The United States Court of Appeals for the District of Columbia Circuit subsequently set aside FDA’s denial of Vanda’s requested hearing and remanded the matter for further proceedings consistent with its opinion (*Vanda Pharms., Inc. v. FDA*, 150 F.4th 563 (D.C. Cir. 2025)). At the request of CDER and Vanda, FDA’s Office of the Commissioner later held the matter in abeyance until February 6, 2026. By letter dated March 2, 2026, the Office of the Commissioner granted Vanda’s hearing request.

II. Presiding Officer

The Office of the Commissioner hereby appoints Administrative Law Judge Keith W. Sickendick, at the Department of Health and Human Services’ Departmental Appeals Board, to serve as presiding officer under 21 CFR 12.60 and to conduct the hearing in accordance with authority prescribed in 21 CFR 12.70.

III. Statutory Grounds for the Hearing

In the NOOH published on October 11, 2022, CDER proposed to refuse to approve sNDA 205677-004 under section 505(d)(5) of the FD&C Act (21 U.S.C. 355(d)(5)) because the application lacks “substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling.”

Vanda has the burden of proof in this proceeding. See 21 CFR 12.87(d) (putting the burden of proof on the

hearing participant requesting approval of a drug application).

IV. Factual Issues for the Hearing

The central factual issue for the hearing is whether Vanda has provided substantial evidence that HETLIOZ (tasimelteon) is effective for treatment of jet lag disorder. As noted by CDER, the decision by the Court of Appeals for the D.C. Circuit included two key holdings that limit the factual scope of the hearing with respect to that central issue. First, the Court upheld FDA's previous conclusion that the question for any hearing on this matter would be whether there is substantial evidence of effectiveness for the indication in the sNDA's proposed labeling—as opposed to any narrower or modified indication that Vanda might now propose, such as treatment of insomnia related to jet lag disorder (*Vanda*, 150 F.4th at 578–79). Second, the Court held that FDA “reasonably determined” that approval of the proposed indication for HETLIOZ (tasimelteon)—treatment of jet lag disorder—requires establishing an effect on both sleep and next-day impairment (*Id.* at 577 (finding that Vanda has an “obligation to prove [effectiveness regarding] the second symptom of jet lag, next-day impairment” and that it is not adequate to “show only that tasimelteon can remedy sleep-disturbance symptoms”)).

On May 15, 2026, pursuant to 21 CFR 12.85(a)(4), CDER submitted to the Dockets Management Staff, *inter alia*, a narrative position statement that, consistent with the deficiencies listed in the NOOH and the decision by the Court of Appeals for the D.C. Circuit, identifies eight specific issues for the hearing:

1. Whether Vanda failed to demonstrate that the primary endpoints in Studies 2102, 3101, and 3107 were appropriate to assess effectiveness of tasimelteon for the treatment of jet lag disorder.
2. Whether Vanda failed to demonstrate that the secondary endpoints in Studies 2102, 3101, and 3107 were appropriate to assess effectiveness of tasimelteon for the treatment of jet lag disorder.
3. Whether the sNDA provides sufficient evidence of an effect on symptoms that are integral to jet lag disorder, such that effectiveness could be established for the proposed indication—treatment of jet lag disorder.
4. Whether Vanda's analysis of the secondary endpoints in Studies 2102, 3101, and 3107 lacks the statistical rigor to reliably support conclusions about the effectiveness of tasimelteon for the treatment of jet lag disorder.
5. Whether the interpretability of Studies 3101 and 3107 is impaired by the failure to include sufficient data (e.g., via collecting baseline polysomnograms or

other methods) to determine whether subjects experienced a sleep disturbance after undergoing a phase advance in the laboratory setting.

6. Whether Vanda failed to provide adequate data to demonstrate effectiveness of the drug when administered according to the dosing and administration information in the proposed labeling.
7. Whether Vanda's assessment of next-day functioning was inadequate.
8. Whether Vanda's application lacks adequate data to characterize the use of tasimelteon to treat jet lag disorder associated with westward travel (CDER's Narrative Position Statement, 5–6).

The presiding officer may further revise the factual issues for the hearing under 21 CFR 12.35(b).

V. Parties to the Hearing

The parties to the hearing will be FDA's CDER and Vanda. Other interested persons shall be permitted to participate as nonparty participants as provided by 21 CFR 12.45 and 12.89.

VI. Disclosure of Information by CDER, Vanda, and Other Hearing Participants

In accordance with 21 CFR 12.85(a), CDER has filed with the Dockets Management Staff a narrative statement setting forth its position on the issues of the hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data and information contained in the Center's files that relate to the issues to be resolved at the hearing. Hearing participants other than CDER, including Vanda, shall disclose data and information and submit their narrative statements pursuant to 21 CFR 12.85(b) to the Dockets Management Staff (see **ADDRESSES**) on or before August 3, 2026, or within another period of time set by the presiding officer. Interested persons may also examine the data on the drug subject to this hearing notice (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) via <https://www.regulations.gov> or at the Dockets Management Staff, between 9 a.m. and 4 p.m., Monday through Friday (see **ADDRESSES**).

VII. Prehearing Conference

The prehearing conference will be held on July 20, 2026, beginning at 10:00 a.m. Eastern Daylight Time, by videoconference with instructions to be provided. The hearing will be held on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Staff no later than July 6, 2026. All participants are required both to attend the prehearing conference and to be prepared to

comply with the provisions of 21 CFR 12.92.

VIII. Conclusion

In accordance with the foregoing, under section 505 the FD&C Act (21 U.S.C. 355) and under authority delegated to me, I order that a formal evidentiary public hearing be held on the issues set out in this notice. The hearing will be open to the public by visiting the HHS Live Streaming page at www.hhs.gov/live. A direct link for the hearing will be visible on the HHS Live Streaming page once a hearing date has been set by the presiding officer after the prehearing conference. Interested persons are encouraged to monitor the docket for any updated links for public access.

IX. References

1. U.S. Department of Health and Human Services, Departmental Appeals Board, Civil Remedies Division, Vanda Pharmaceuticals, Inc. Supplemental New Drug Application for HetlioZ (Tasimelteon), C-26-457, Case Development Order [Civil Remedies Division Procedures, March 28, 2016], June 3, 2026.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-11046 Filed 6-2-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-2602]

Third Annual Animal Drug User Fee Educational Conference; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following educational conference (public meeting) entitled “Third Annual Animal Drug User Fee Educational Conference.” This is the third of five annual educational conferences FDA will host as described in the “Animal Drug User Fee Act Reauthorization Performance Goals and Procedures Fiscal Years 2024 Through 2028.” The purpose of this series of conferences is to provide educational sessions for stakeholders who are interested in the new animal drug approval process.

DATES: The third educational conference will be held on July 7, 2026, from 9 a.m. to 1 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration dates and information. You may submit comments at any time for this series of educational conferences. We request that you submit either electronic or written comments within 90 days after each annual educational conference to ensure that the Agency considers your comment on a topic discussed at that conference.

ADDRESSES: The third educational conference will be available in person and virtually. The in-person conference will be held at the Harvey W. Wiley Federal Building, 5001 Campus Drive, Room 1A-001, College Park, MD 20740. Routine security check procedures will be performed at the entrance to the building. Participants must be REAL ID compliant to access federal facilities. For additional information regarding REAL ID, refer to <https://www.dhs.gov/real-id/real-id-faqs>. Persons interested in attending this educational conference must register at: <https://events.gcc.teams.microsoft.com/event/8a5f6cc5-9964-48f3-8ae6-b8041bdef77e@7d2fdb41-339c-4257-87f2-a665730b31fc>.

You may submit comments as follows.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-N-2602 for "Third Annual Animal Drug User Fee Educational Conference." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents and the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the

docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Krystyna Reign, Center for Veterinary Medicine, Food and Drug Administration, 5001 Campus Drive, College Park, MD 20740, 240-402-0631, adufa_v_edu_conference@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Animal Drug User Fee Act (Pub. L. 108-130) (ADUFA or the Act) was originally signed into law in 2003 and was subsequently reauthorized by Congress in 2008, 2013, 2018, and 2023. ADUFA authorizes FDA to collect fees for certain new animal drug applications, products, establishments, and sponsors. Resources generated under ADUFA supplement the Agency's funding to enhance the performance of the drug review process, ensuring that new animal drug products are safe and effective for animals, and that food derived from treated animals will be safe for consumption. FDA considers the timely review of the safety and effectiveness of new animal drug applications to be central to the Agency's mission to protect and promote human and animal health.

The Animal Drug User Fee Amendments of 2023 (ADUFA V), the most recent reauthorization of the Act, authorizes FDA to collect user fees through fiscal year 2028. "The Animal Drug User Fee Act Reauthorization Performance Goals and Procedures Fiscal Years 2024 Through 2028" (Performance Goals Letter) sets forth the Agency's performance goals for the period covered by ADUFA V. Among other goals, the document commits the Agency to hosting triannual meetings (three meetings per calendar year) with Animal Health Institute (AHI) members, one of which will consist of an educational conference of up to 8 hours for the animal drug industry. This notice announces the third of these annual Animal Drug User Fee Educational Conferences. These conferences are open to the public.

II. Topics for Discussion at the Educational Conference

As described in the Performance Goals Letter, FDA will plan a series of topics for the educational conferences during the 5 years of ADUFA V. While the agenda for each educational conference is determined by the Agency with input from AHI, all stakeholders

are welcome to submit comments to the docket requesting topics to be included for future educational conferences (see **ADDRESSES**).

This third conference will focus on the following topics:

- (1) Overview of Available Regulatory Pathways
- (2) Conditional Approval and Indexing for Minor Use/Minor Species (MUMS)
- (3) Expanded Conditional Approval and Reasonable Expectation of Effectiveness
- (4) Real World Example of Regulatory Flexibility During a Public Health Emergency
- (5) Animal Biotechnology Products and the Veterinary Innovation Program (VIP)
- (6) Protocol Quality and Best Practices

The conference will also contain a Q&A session during which FDA will address specific questions from the in-person and virtual audience as time allows. Questions and comments received during each annual conference and comments submitted to the docket will inform the conversation and topics considered in subsequent conferences.

III. Participating in the Educational Conference

Registration: This educational conference is open to the public and will be available virtually and in-person. When registering, please provide complete contact information for each attendee, including name, title, affiliation (if any), address, and email. Also, please self-identify as a member of one of the stakeholder categories: regulated industry, scientific or academic experts, veterinary professionals, consumer advocacy groups, press/media relations, FDA, other government/congress, or other.

Early registration is recommended for persons who wish to attend in person. Registrants will receive confirmation when their registration has been received, and they will be provided the webcast link. Persons interested in attending this conference virtually may register until the start time of the conference. Persons interested in attending this conference in person are encouraged to register online at <https://events.gcc.teams.microsoft.com/event/8a5f6cc5-9964-48f3-8ae6-b8041bdef77e@7d2fdb41-339c-4257-87f2-a665730b31fc> no later than June 25, 2026.

If you need special accommodations due to a disability, please contact Krystyna Reign (see **FOR FURTHER**

INFORMATION CONTACT) no later than June 25, 2026.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-11101 Filed 6-2-26; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-D-1257]

Leveraging Prior Knowledge in the Development of Human Gene Therapy Products Incorporating Genome Editing; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft document entitled “Leveraging Prior Knowledge in the Development of Human Gene Therapy Products Incorporating Genome Editing.” The draft guidance document provides sponsors engaged in the development of human gene therapy (GT) products incorporating ex-vivo and in vivo genome editing (GE) of human somatic cells (GE products) with FDA’s recommendations on the type of prior knowledge that may be scientifically appropriate to leverage to advance product development.

DATES: Submit either electronic or written comments on the draft guidance by September 1, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or

confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2026-D-1257 for “Leveraging Prior Knowledge in the Development of Human Gene Therapy Products Incorporating Genome Editing; Draft Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, by emailing industry.biologics@fda.hhs.gov. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Rhea Chakraborty, Center for Biologics Evaluation and Research, Food and Drug Administration, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled “Leveraging Prior Knowledge in the Development of Human Gene Therapy Products Incorporating Genome Editing; Draft Guidance for Industry.” This draft guidance, when finalized, will reflect FDA’s current thinking on the type of prior knowledge that may be scientifically appropriate to leverage to advance product development. This draft guidance also provides recommendations on how sponsors may consider leveraging prior knowledge to increase review efficiency and accelerate product development across multiple programs. These recommendations include how to leverage chemistry, manufacturing, and controls; nonclinical; and clinical prior knowledge. The ability to leverage prior knowledge to expedite product development may be particularly

helpful in the context of GE products intended to treat rare diseases. While this draft guidance specifically focuses on GE products, some of the recommendations, when finalized, may also be applicable to other cell and GT products, such as adeno-associated viral vectors, nanoparticle-based GT products, and ex vivo-modified cell-based GTs that do not incorporate GE. However, additional considerations may also apply to these related product types, based on the specific product and manufacturing process, that are beyond those recommended in this draft guidance.

FDA is issuing this draft guidance in accordance with a commitment outlined in the reauthorization of the Prescription Drug User Fee Act (PDUFA VII) under the 2022 FDA User Fee Reauthorization Act.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Leveraging Prior Knowledge in the Development of Human Gene Therapy Products Incorporating Genome Editing.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 210 and 211 relating to current good manufacturing practice have been approved under OMB control number 0910-0139. The collections of information in 21 CFR part 312 for the submissions of investigational new drug applications, including clinical trials, have been approved under OMB control number 0910-0014. The collections of information in 21 CFR part 601 relating to the submissions of biologic license applications have been approved under OMB control number 0910-0338. The collections of information in 21 CFR part 1271 relating to human gene

therapy products have been approved under OMB control number 0910-0543.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-11054 Filed 6-2-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-5580]

M15 General Principles for Model-Informed Drug Development; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “M15 General Principles for Model-Informed Drug Development.” The guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The guidance provides general recommendations for the planning, model evaluation, and documentation of evidence derived from model-informed drug development (MIDD). It establishes a harmonized assessment framework (including the associated terminology) for the MIDD evidence. It also provides recommendations for related regulatory interactions, reporting, and submission. This guideline is intended to facilitate a multidisciplinary understanding of MIDD and associated evidence generation. The guidance finalizes the draft guidance of the same title issued on December 30, 2024.

DATES: The announcement of the guidance is published in the **Federal Register** on June 3, 2026.

ADDRESSES: You may submit either electronic or written comments on

Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-D-5580 for "M15 General Principles for Model-Informed Drug Development." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Hao Zhu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3134, Silver Spring, MD 20993-0002, 301-796-2772; or Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 240-402-7911.

Regarding the ICH: Brooke Dal Santo, Center for Drug Evaluation and Research, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6304, Silver Spring, MD 20993-0002, 301-348-1967, Brooke.DalSanto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "M15 General Principles for Model-Informed Drug Development." The guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are the FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to <https://www.ich.org/>).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of December 30, 2024 (89 FR 106504), FDA published a notice announcing the availability of a draft guidance entitled “M15 General Principles for Model-Informed Drug Development.” The notice gave interested persons an opportunity to submit comments by February 28, 2025.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in February 2026.

This guidance finalizes the draft guidance of the same title issued on December 30, 2024. The guidance provides general recommendations for the planning, model evaluation, and documentation of evidence derived from MIDD. In response to public comments, the guidance updates definitions of key terms and clarifies concepts introduced in the framework for assessment of MIDD evidence. It revises the general considerations for model evaluation. The guidance also updates recommendations on interactions between drug developers and regulatory agencies.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “M15 General Principles for Model-Informed Drug Development.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR parts 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control numbers 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.regulations.gov>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/>

guidances-drugs, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–11112 Filed 6–2–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1307]

Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry titled “Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers.” This revised draft guidance, when finalized, will provide answers to common questions regarding the communication of health care economic information (HCEI) about approved prescription drugs and approved/cleared (as defined in the guidance) medical devices (collectively referred to in the guidance as approved/cleared medical products) by medical product manufacturers, packers, distributors, and their representatives (collectively referred to as firms) to payors, formulary committees, or other similar entities with knowledge and expertise in the area of health care economic analysis, carrying out their responsibilities for the selection of medical products for coverage or reimbursement (collectively referred to as payors). This revised draft guidance also provides answers to common questions about firms’ dissemination of information to payors about medical products that are not yet approved/cleared for any use (collectively referred to as unapproved medical products) and firms’ dissemination of information to payors about unapproved uses of approved/cleared medical products.

DATES: Submit either electronic or written comments on the draft guidance by August 3, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2016–D–1307 for “Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9

a.m. and 4 p.m., Monday through Friday, 240-402-7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

With regard to the guidance: Twyla Mosey, Center for Drug Evaluation and

Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3203, Silver Spring, MD 20993-0002, 301-796-1200; Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 240-402-7911; or Stephanie Philbin, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5513, Silver Spring, MD 20993-0002, 301-837-7151.

With regard to the proposed collection of information: Anne Taylor, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 240-402-5683, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry titled “Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers.” This revised draft guidance incorporates updates to the Federal Food, Drug, and Cosmetic Act (FD&C Act) as amended by section 3630 of the Consolidated Appropriations Act, 2023 and, when final, will replace the final guidance of the same title issued in June 2018. This revised draft guidance provides answers to common questions regarding firms’ communications of HCEI about their approved/cleared medical products to payors. In addition, the guidance addresses common questions relating to firms’ dissemination to payors of information about unapproved medical products and about unapproved uses of approved/cleared medical products. In this guidance, the term payors collectively refers to payors, formulary committees, or other similar entities with knowledge and expertise in the area of health care economic analysis that are responsible for making medical product selection or acquisition, formulary management, and/or coverage and reimbursement decisions on a population basis regarding medical products on behalf of health care organizations, which may include entities such as integrated health care delivery networks, hospitals, and hospital systems.

FDA is aware that payors seek a range of information on effectiveness, safety, and cost-effectiveness of approved/cleared medical products, including information from firms, to help support their medical product selection, formulary management, and/or coverage and reimbursement decisions on a population basis. This information may

differ from and may be in addition to the information FDA reviews in order to make medical product approval or clearance decisions. HCEI and product information provided by firms to payors about their medical products must be truthful and not misleading (see section 502(a) and 502(gg) of the FD&C Act (21 U.S.C. 352(a) and 352(gg))).

With respect to HCEI regarding approved/cleared medical products, section 502(a) of the FD&C Act, as amended by section 114 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115), section 3037 of the 21st Century Cures Act (Pub. L. 114-255), and section 3630 of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), includes a provision regarding communication of HCEI about such medical products to payors.

Section 502(a) of the FD&C Act indicates that HCEI provided to payors carrying out their responsibilities for the selection of medical products for coverage or reimbursement shall not be considered to be false or misleading if the HCEI (1) relates to an FDA-approved indication for the medical product (in this guidance, *approved* is defined to include cleared, among other things), (2) is based on competent and reliable scientific evidence, and (3) includes, where applicable, a conspicuous and prominent statement describing any material differences between the health care economic information and the FDA-approved labeling for the medical product (in this guidance, the term *FDA-approved labeling* includes FDA-required labeling). Section III.A of this guidance provides FDA’s current thinking on key concepts in section 502(a) of the FD&C Act and recommendations for how firms can communicate HCEI about approved/cleared medical products to payors in accordance with section 502(a). This information is intended to help ensure that payors have information needed to make informed medical product selection, formulary management, and/or coverage and reimbursement decisions and to help ensure that the information is not false or misleading. Section III.A also discusses how FDA’s requirements for submission of promotional materials apply to HCEI about approved drugs disseminated by firms to payors. Section 502(a) of the FD&C Act provides that HCEI disseminated in accordance with its terms is not false or misleading. If a firm disseminates to an appropriate audience HCEI that is of the type of information described in section 502(a) of the FD&C Act, *i.e.*, HCEI that relates to an approved indication and is based on

competent and reliable scientific evidence (CARSE), as each of these elements is described in the guidance, FDA does not intend to consider such information false or misleading. In addition, FDA does not intend to use HCEI about approved/cleared medical products disseminated consistent with this guidance, standing alone, as evidence of a new intended use.

FDA also recognizes that due in part to payors' need, in some situations, to plan for and make coverage and reimbursement decisions far in advance of the effective date of such decisions, payors are also interested in receiving information from medical product firms about unapproved medical products and about unapproved uses of approved/cleared medical products. Section III.B of this guidance discusses FDA's thinking with respect to communication by firms to payors regarding unapproved medical products and unapproved uses of approved/cleared medical products. As with firms' communications to payors of HCEI about approved/cleared medical products, it is essential that information provided by firms about their unapproved medical products and about unapproved uses of their approved/cleared medical products be truthful and non-misleading. Section 502(gg) of the FD&C Act provides that medical products shall not be deemed to be misbranded under section 502(f)(1) through a communication by a firm to a payor about investigational medical products or investigational uses of approved/cleared medical products if such communication is (1) the type of product information as defined in section 502(gg)(2); (2) truthful and not misleading; (3) presented with the information set forth in section 502(gg)(1)(A); and (4) not presented with the information set forth in section 502(gg)(1)(B). While section 502(gg) of the FD&C Act addresses investigational medical products or investigational uses of medical products, FDA does not intend to object under section 502(f)(1) on the basis of a firm's communication of product information to payors about unapproved medical products or unapproved uses of medical products, even where such unapproved medical products or uses may not be considered investigational, if the communication of product information is consistent with section 502(gg).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Drug and Device Manufacturer Communications With Payors,

Formulary Committees, and Similar Entities—Questions and Answers." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop any final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers

OMB Control Number 0910–0686—Revision

As noted, the revised draft guidance document "Drug and Device Manufacturer Communications With Payors, Formulary Committees, and

Similar Entities—Questions and Answers" provides answers to common questions regarding firms' communications of HCEI about their approved/cleared medical products to payors. In addition, the guidance addresses common questions relating to firms' dissemination to payors of information about unapproved medical products and about unapproved uses of approved/cleared medical products.

The revised draft guidance incorporates recent updates to the FD&C Act. Section 3630 of the Consolidated Appropriations Act, 2023, "Facilitating Exchange of Product Information Prior To Approval," amended section 502(a) of the FD&C Act to make the provisions regarding communication of HCEI to payors under section 502(a) applicable to devices. In addition, a new subsection (gg) was added to section 502 of the FD&C Act that addresses firms' provision of information to payors regarding investigational medical products and investigational uses of approved/cleared medical products. This revised draft guidance includes updates to reflect the revised statutory text, including updates to align the guidance recommendations with the new section 502(gg) of the FD&C Act, which provides "no drug or device shall be deemed to be misbranded" under section 502(f)(1) (21 U.S.C. 352(f)(1)) because of certain truthful and not misleading information provided to payors. While section 502(gg) of the FD&C Act applies to information about investigational medical products and investigational uses of medical products that are approved/cleared, section III.B of the revised draft guidance applies to information about all unapproved medical products and unapproved uses of medical products. We request OMB approval of these changes to our statutory authority for this collection of information.

Although section 3630 of the Consolidated Appropriations Act, 2023 amended section 502(a) of the FD&C Act to make the provisions regarding communication of HCEI to payors under section 502(a) applicable to devices, we previously had included recommendations to communicate HCEI about devices in the final guidance of the same title issued in June 2018. Thus, in our burden estimate for that guidance, we included burden hours for both drugs and devices (83 FR 27605). We also included burden hours for both drugs and devices when we sought reauthorization of OMB approval in 2021 (86 FR 39035). For efficiency reasons, OMB control number 0910–0857 was consolidated into 0910–0686. As a result, the information collection

burden estimates currently approved under 0910–0686 incorporate the burden of communicating HCEI about both drugs and devices.

As stated above, the analysis of the collection of information and its related burden on respondents for this guidance included the burden related to HCEI

about both drugs and devices; thus, for this revised guidance there is no additional estimated burden beyond the burden hours that were included in the PRA analysis of the final guidance issued in June 2018, as reauthorized in 2021. We are, however, revising the

information collection currently approved under OMB control number 0910–0686 to reflect the changes to our statutory authority for this collection of information.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN¹

Information collection activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Recommended information to be included when firms choose to disseminate HCEI materials to payors about approved prescription drugs.	600	13	7,800	20	156,000
Recommended information to be included when firms choose to disseminate HCEI materials to payors about approved or cleared devices.	260	10	2,600	20	52,000
Recommended information to be included when firms choose to disseminate information about unapproved medical products or unapproved uses of approved or cleared medical products.	853	2	1,706	0.5 (30 minutes)	853
Follow-up information to payors regarding previously communicated information about unapproved medical products or unapproved uses of approved or cleared medical products.	427	2	854	2	1,708
Total			12,960		210,561

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the postmarketing submissions of promotional materials using Form FDA 2253 (<https://www.fda.gov/media/73013/download>) received in calendar year (CY) 2023 for approved human prescription drugs (including prescription biological products) and approved or cleared medical devices, FDA estimates that approximately 600 manufacturers will disseminate 7,800 distinct HCEI materials for approved human prescription drugs annually. FDA estimates that approximately 260 manufacturers will disseminate 2,600 distinct HCEI materials for approved or cleared devices annually. FDA further estimates that firms will expend approximately 20 hours to compile and draft the information that the guidance recommends should be included when disseminating HCEI materials for approved human prescription drugs and approved or cleared devices.

Based on the number of human prescription medical products approved or cleared and number of efficacy supplements approved or cleared in a CY (*i.e.*, approving or clearing a new use for an approved medical product), FDA estimates that approximately 853 manufacturers will prepare 11,706 distinct communications of information to payors about their unapproved medical products or unapproved uses of approved or cleared medical products annually. FDA estimates firms will

expend approximately 0.5 hours to compile and draft the information that the guidance recommends should be provided with communications to payors about unapproved medical products or unapproved uses of approved or cleared medical products. Additionally, FDA estimates that 50 percent of the firms will expend approximately 2 hours annually to compile and provide 854 distinct communications of follow-up information regarding previously communicated information to payors about their unapproved medical products or unapproved uses of approved or cleared medical products.

Our estimated burden for the information collection reflects an overall increase of 7,883 hours and a corresponding increase of 472 disclosures. We attribute this adjustment to an increase in the number of HCEI materials disseminated over the last few years.

This revised draft guidance also refers to previously approved FDA collections of information. The collections of information in 21 CFR part 314 relating to submission of investigational new drug applications and Form FDA 2253 (Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use) have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 relating

to submission of labeling in a biologics license application have been approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 801 and 809 relating to Medical Device Labeling have been approved under OMB control number 0910–0485.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–11060 Filed 6–2–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2026-N-5816]

**Elite Laboratories, Inc. et al.;
Withdrawal of Approval of 16
Abbreviated New Drug Applications****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.**SUMMARY:** The Food and Drug Administration (FDA or Agency) is

withdrawing approval of 16 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of July 6, 2026.**FOR FURTHER INFORMATION CONTACT:**

Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676,

Silver Spring, MD 20993-0002, 301-796-3471, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The applicants listed in table 1 have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

TABLE 1—ANDAS FOR WHICH APPROVAL IS WITHDRAWN

Application No.	Drug	Applicant
ANDA 040227	Phentermine hydrochloride (HCl) capsule, 30 milligrams (mg)	Elite Laboratories, Inc., 165/144/135 Ludlow Ave., Northvale, NJ 07647.
ANDA 040460	Phentermine HCl capsule, 15 mg	Do.
ANDA 065025	Cyclosporine solution, 100 mg/milliliters (mL)	AbbVie Inc., 1 N Waukegan Rd., North Chicago, IL 60064.
ANDA 075180	Ranitidine HCl tablet, Equivalent to (EQ) 150 mg and EQ 300 mg.	Par Health USA LLC, U.S. Agent for PH Health Limited, 300 Tice Blvd., Suite 230, Woodcliff Lake, NJ 07677.
ANDA 076434	PAROEX (chlorhexidine gluconate) solution, 0.12%	Sunstar Americas, Inc., 301 E Central Rd., Schaumburg, IL 60195.
ANDA 090734	OXYCODONE AND ACETAMINOPHEN (acetaminophen; oxycodone HCl) tablet, 325 mg; 7.5 mg and 325 mg; 10 mg.	Par Health USA LLC, U.S. Agent for PH Health Limited, 9 Great Valley Parkway, Malvern, PA 19355.
ANDA 204960	Cisatracurium besylate injectable, EQ 2 mg base/mL, CISATRACURIUM BESYLATE PRESERVATIVE FREE (cisatracurium besylate) injectable EQ 2 mg base/mL and EQ 10 mg base/mL.	eVenus Pharmaceutical Lab Inc., U.S. Agent for Jiangsu Hengrui Pharmaceuticals Co., Ltd., 506 Carnegie Center, Suite 102, Princeton, NJ 08540.
ANDA 206159	DEXTROAMP SACCHARATE, AMP ASPARTATE, DEXTROAMP SULFATE AND AMP SULFATE (amphetamine aspartate; amphetamine sulfate; dextroamphetamine saccharate; dextroamphetamine sulfate) (extended-release capsule, 1.25 mg; 1.25 mg; 1.25 mg; 1.25 mg, 2.25 mg; 2.25 mg; 2.25 mg; 2.25 mg, 3.75 mg; 3.75 mg; 3.75 mg; 3.75 mg, 5 mg; 5 mg; 5 mg; 5 mg, 6.25 mg; 6.25 mg; 6.25 mg; 6.25 mg, and 7.5 mg; 7.5 mg; 7.5 mg; 7.5 mg).	Par Health USA LLC, U.S. Agent for PH Health Limited.
ANDA 207366	Ribavirin solution, 6 grams/vial	Navinta LLC, 1499 Lower Ferry Rd., Ewing, NJ 08618.
ANDA 210653	Clomipramine HCl capsule, 25 mg, 50 mg, and 75 mg	PTS Consulting, LLC, U.S. Agent for TP ANDA HOLDINGS, LLC., 6739 Valhalla Ct., Shawnee, KS 66217.
ANDA 210948	Albuterol sulfate tablet, EQ 2 mg base and EQ 4 mg base	Makro Technologies Inc., (Makrocare) U.S. Agent for Aizant Drug Research Solutions Private Limited, 116 Village Blvd., Suite # 200, Princeton, NJ 08540.
ANDA 211538	Vasopressin solution, 20 units/mL	Eagle Pharmaceuticals, Inc., 50 Tice Blvd., Suite 315, Woodcliff Lake, NJ 07677.
ANDA 212106	Entecavir tablet, 0.5 mg and 1 mg	CMC GMP LLC, U.S. Agent for Pharmadax Inc., 9805 NE 116th St. PMB #A255, Kirkland, WA 98034.
ANDA 212957	Fosaprepitant dimeglumine powder, EQ 150 mg base/vial	Navinta LLC.
ANDA 214423	Venlafaxine HCl extended-release tablet, EQ 75 mg base and EQ 150 mg base.	CMC GMP LLC, U.S. Agent for Pharmadax Inc.
ANDA 218638	Nicardipine HCl capsule, 20 mg and 30 mg	Navinta LLC.

Therefore, approval of the applications listed in table 1, and all amendments and supplements thereto, is hereby withdrawn as of July 6, 2026. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from table 1. Introduction or delivery for introduction into interstate commerce of products listed in table 1 without an approved abbreviated new drug application violates sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)). Drug products that are listed in table 1 that are in inventory on July 6, 2026 may continue to be dispensed until the inventories have been depleted or the drug products have reached their

expiration dates or otherwise become violative, whichever occurs first.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-11062 Filed 6-2-26; 8:45 am]

BILLING CODE 4164-01-P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Submission for OMB Review; 30-Day
Comment Request Regular Clearance
for the National Institute of Mental
Health Data Archive (NDA), (NIMH)****AGENCY:** National Institutes of Health, HHS.**ACTION:** Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and

approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received by June 3, 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: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Andrew Hooper, National Institute of Mental Health (NIMH) Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call (301) 480–8433 or Email your request, including your address to nimhprapubliccomments@mail.nih.gov.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on March 4, 2026 (91 FR10621) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the NIH has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title: The National Institute of Mental Health Data Archive (NDA), NIMH, 0925–0667, expiration date 6/30/2026, REVISION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIMH Data Archive (NDA) is an infrastructure that allows for the submission and storage of human subjects’ data from researchers conducting studies related to many scientific domains, regardless of the source of funding. The NIH and the NIMH seek to encourage use of the NDA by investigators in the field of multiple scientific research domains to achieve rapid scientific progress. In order to manage access to this data system, NIMH collects information from two categories of NDA users: (1) Investigators who seek permission to access data from the NDA for the purpose of scientific investigation, scholarship or teaching, or other forms of research and research development, via the Data Use Certification (DUC), and (2) investigators who request permission to submit data to the NDA for the purpose of scientific investigation, scholarship or teaching, or other forms of research and research development, via the Data Submission Agreement (DSA).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,875.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of projects per respondent	Average time per response (in hours)	Total burden hours
NDA Data Submission Agreement (DSA).	Researchers submitting data	300	1	90/60	450
NDA Data Use Certification (DUC) ...	Researchers requesting access to data.	950	1	90/60	1,425
Total			1,250		1,875

Dated: May 29, 2026.
Andrew A. Hooper,
Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.
[FR Doc. 2026–11045 Filed 6–2–26; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
[CBP Dec. 26–10]
Tuna Tariff-Rate Quota for Calendar Year 2026 for Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)
AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.
ACTION: Announcement of the quota quantity for tuna in airtight containers for Calendar Year 2026.
SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule

of the United States (HTSUS), is calculated as a percentage of the tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the preceding calendar year. This document sets forth the tariff-rate quota for Calendar Year 2026.
DATES: The 2026 tariff-rate quota is applicable to tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the period January 1, 2026 through December 31, 2026.
FOR FURTHER INFORMATION CONTACT: Julia Peterson, Chief, Quota and Agricultural Branch, Textiles and Trade Agreement Division, Trade Programs, Office of Trade, U.S. Customs and Border Protection, Washington, DC 20229–

1155, at (202) 384–8905 or by email at HQUOTA@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: It has been determined that 16,364,101 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during Calendar Year 2026, at the rate of 6.0 percent *ad valorem*, under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem*, under subheading 1604.14.30, HTSUS.

Susan S. Thomas

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2026–11113 Filed 6–2–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0037]

Hermit's Peak/Calf Canyon Fire Assistance

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notification of deadline.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the deadline to request to reopen certain claims under the Hermit's Peak/Calf Canyon Fire Assistance Act.

DATES: The deadline to request to reopen qualifying claims is August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Jose Baquero, Office of Response and Recovery, 202–646–2500, FEMA-Hermits-Peak@fema.dhs.gov. Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: FEMA's implementing regulations for the Hermit's Peak/Calf Canyon Fire Assistance Act provide that claimants may request to reopen claims where the claimant has incurred additional losses under 44 CFR 296.21(c)(1) as part of a reconstruction in excess of those previously awarded or the Director of the Claims Office otherwise determines that claimant has demonstrated good

cause no later than the deadline established by the Director of the Claims Office as published in the **Federal Register** and at <https://www.fema.gov/hermits-peak>. 44 CFR 296.35. The Director is establishing a deadline of August 3, 2026 for such claims.

Authority: Hermit's Peak/Calf Canyon Fire Assistance Act, Pub. L. 117–180, 136 Stat. 2114, 2168; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; and 44 CFR 296.35.

Jose Baquero,

Director, Hermit's Peak/Calf Canyon Claims Office, Federal Emergency Management Agency.

[FR Doc. 2026–11055 Filed 6–2–26; 8:45 am]

BILLING CODE 9111–68–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on National Security and Emergency Preparedness Communications (NSEPC)

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-day notice of information collection; request for comment; collection request, (request for OMB control number).

SUMMARY: The Emergency Communications Division within Cybersecurity and Infrastructure Security Agency (CISA) submits the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance. CISA previously published this information collection request (ICR) in the **Federal Register** on July 18, 2025 for a 60-day public comment period. No comments were received by CISA. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until July 6, 2026.

Submissions received after the deadline for receiving comments may not be considered.

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.

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

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

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

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: Antonio Branham, 202–981–1930, Antonio.branham@mail.cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Congress passed Public Law 109–295 in 2006, which included Subtitle D, SEC. 671 ‘Emergency Communications’, also referred to as the ‘21st Century Emergency Communications Act of 2006’. The legislation established the Department of Homeland Security (DHS) Office of Emergency Communications, which was retitled in 2018 as the Emergency Communications Division (ECD) (hereafter “the Agency”) within CISA, to spearhead the development and implementation efforts, on behalf of emergency responders and government officials across public and private sectors, of an extensive approach to advancing national interoperable communications capabilities.

Under Subtitle D, SEC. 1801. Office of Emergency Communications, 6 U.S.C. 571(c), the following requirements and responsibilities were established for the Director for Emergency Communications to:

(4) conduct extensive, nationwide outreach to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of

natural disasters, acts of terrorism, and other man-made disasters.

(5) conduct extensive nationwide outreach and foster the development of interoperable emergency communications capabilities by state, regional, local, and tribal governments, emergency responders, public safety agencies, and by regional consortia thereof.

(8) promote the development of standard operating procedures and best practices with respect to use of interoperable emergency communications capabilities for incident response and facilitate the sharing of information on such best practices for achieving, maintaining, and enhancing interoperable emergency communications capabilities for such response.

(9) coordinate, in cooperation with the National Communications System, the establishment of a national response capability with initial and ongoing planning, implementation, and training for the deployment of communications equipment for relevant state, local, and tribal governments and emergency response providers in the event of a catastrophic loss of local and regional emergency communications services.

(13) develop and update periodically, as appropriate, a National Emergency Communications Plan under section 572 of this title;

(14) perform such other duties of the Department necessary to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of natural disasters, acts of terrorism, and other man-made disasters; and

(15) perform other duties of the Department necessary to achieve the goal of and maintain and enhance interoperable emergency communications capabilities

Sec. 1802. 6 U. S. C. § 572 (a)–(c) requires the Director of Emergency Communications, in cooperation with state, local, and tribal governments, federal departments and agencies, emergency response providers, and the private sector, develop no later than 180 days after the completion of the baseline assessment under section 573 of this title, and periodically update, a National Emergency Communications Plan to support, promote, accelerate, and attain interoperable emergency communications nationwide.

6 U. S. C § 573 (a) requires the DHS Secretary to conduct an assessment of Federal, State, local, and tribal governments that (1) defines the range of capabilities needed by emergency response providers and relevant

government officials, (3) assesses the current available capabilities to meet such communications needs; (4) identifies the gap between such current capabilities and defined requirements; at least every five years. This collection of information is necessary to due to the requirement of continuous examinations of nationwide emergency communications capabilities.

To continuously work to ensure that programs are effective and meet customers' needs, the Cybersecurity and Infrastructure Security Agency Emergency Communications Division seeks to obtain OMB approval through the generic clearance process to collect qualitative and quantitative feedback on national security and emergency preparedness communications. Qualitative feedback means information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This information is an imperative requirement to address the multifaceted national emergency and critical infrastructure plans and interagency coordination to implement, support, protect, strengthen, and enhance emergency communications capabilities. Enabling and improving efforts to garner customer and stakeholder feedback in an efficient, and timely manner is vital to the security of the nation to establish uniform policies, standards, and guidelines for integrating emergency communications across federal infrastructure protection and risk management within all 16 infrastructure sectors.

It will allow for insight into customer and stakeholder perceptions, experiences and expectations, and to focus attention on areas where emergency communications, public safety training, or changes or in operations might improve ECD initiatives. The collections from the NSEPC will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders while simultaneously contributing directly to the improvement of program management.

Improving agency programs requires the consistency of ongoing assessment of service delivery, meaning a systematic review of the operation of a program compared to a set of explicit or implicit standards, as a way of contributing to the continuous improvement of the program. The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify

strengths and weaknesses of current services and make improvements in service delivery based on feedback. The respondent pool consists of, but is not limited to, federal, state, local, tribal, territorial and industry users of emergency communications priority services. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable. The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency. (If released, appropriate Agency procedures will be followed);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions;
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study;
- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future; and
- With the exception of information needed to provide remuneration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained.

If these conditions are not met, the Agency will submit an information collection request to OMB for approval through the normal PRA process. To obtain approval for a collection that meets the conditions of this generic clearance, a standardized form will be submitted to OMB along with supporting documentation (e.g., a copy of the comment card). The submission will have automatic approval unless OMB identifies issues within 5 business days.

The types of collections that this generic clearance covers include, but are not limited to:

- Customer satisfaction surveys/feedback surveys
- Customer comment cards/complaint forms
- Self-Assessment questionnaire
- Small panel/discussion groups of customers, potential customers, or other stakeholders

The Agency has established a manager/managing entity to serve for this generic clearance and will conduct an independent review of each information collection to ensure compliance with the terms of this clearance prior to submitting each collection to OMB. If appropriate, agencies will collect information electronically and/or use online collaboration tools to reduce burden. Small business or other small entities may be involved in these efforts, but the Agency will minimize the burden on them of information collections approved under this clearance by sampling, asking for readily available information, and using short, easy-to-complete information collection instruments. Without these types of feedback, the Agency will not have timely information to adjust its services to meet customer needs. If a confidentiality pledge is deemed useful and feasible, the Agency will only include a pledge of confidentiality that is supported by authority and agency policy, that is and that does not unnecessarily impede sharing of data with other agencies for compatible confidential use. There are no program changes since the previous OMB approval.

This is a new information collection request.

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

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through utilization of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Generic Clearance for the Collection of Qualitative Feedback on National Security and Emergency Preparedness Communications (NSEPC).

OMB Number: 1670–NEW.

Frequency: Quarterly.

Affected Public: Federal, State, Local, Tribal, Territorial, And Industry Users of National Security and Emergency Preparedness Communications Public Safety Services.

Number of Respondents: 10,000,000 (customer satisfaction/feedback surveys), 1,899,000 (customer comment cards/complaint forms), 100,000 (self-assessment questionnaire), 1,000 (small panel/discussion groups).

Estimated Time per Respondent: 30 minutes (customer satisfaction/feedback surveys), 10 minutes (customer comment cards/complaint forms), 30 minutes (self-assessment questionnaire), 1 hour (small panel/discussion groups).

Total Burden Hours: 5,368,133.

Total Burden Cost (capital/startup): \$292,350,840.

Total Burden Cost (operating/maintaining): \$68,076.83.

Winfield P Werntz,

Acting Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2026–11111 Filed 6–2–26; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0057]

Departure Notification Record

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for

review and clearance. This information collection was previously published in the **Federal Register** on January 8, 2026, allowing for a 60-day comment period. ICE received several comments which have been addressed in the supporting statement available on www.reginfo.gov/public/do/PRAMain. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 6, 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 30-day Review—Open for Public Comments” or by using the search function under e-Docket ID number ICEB–2026–0001–0001.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact U.S. Immigration and Customs Enforcement at ICEPRA@ice.dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* Departure Notification Record.

(3) *Agency form number, if any, and the applicable component of the*

Department of Homeland Security sponsoring the collection: U.S.

Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. DHS, including CBP and ICE, will use this information to identify those aliens geographically located in the United States who want to voluntarily depart the United States. Those aliens will be able to report biographic data and biometric data, as well as information about their intended departure. With this information, DHS can assist aliens to depart from the United States to their destination country. DHS will use a mobile application, currently CBP Home, to collect this information.

(5) *An estimate of the total number of responses and the amount of time estimated for an average respondent to respond:* ICE estimates a total of 16,800,000 responses at 5 minutes per response

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,349,400 annual burden hours.

Dated: May 27, 2026.

Ashley Pearce,

Deputy Chief Data Officer.

[FR Doc. 2026–11135 Filed 6–2–26; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: TSA PreCheck® Application Program

AGENCY: Transportation Security Administration, Department of Homeland Security (DHS).

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0059, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of biographic and biometric information by TSA PreCheck® Application Program or U.S. Customs and Border Protection (CBP) Trusted Traveler Program individuals enrolling in MyTSA PreCheck ID™, TSA's

Customer Service Portal, and Seamless Identity Automation.

DATES: Send your comments by July 6, 2026. A comment to OMB is most effective if OMB receives it within 30 days of publication.

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 Review—Open for Public Comments” and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, VA 22150; telephone (571) 227–2062; email TSAAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on January 15, 2026, 91 FR 1799. TSA received five public comments as discussed in the accompanying Supporting Statement.

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

Title: TSA PreCheck Application Program, 49 U.S.C. 114.

Type of Request: Revision of a previously approved collection.

OMB Control Number: 1652–0059.
Forms(s): N/A.

Affected Public: Individuals.

Abstract: 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 (DHS) Security Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005).

Although participation in the TSA PreCheck Application Program is voluntary, individuals must submit biographic and biometric¹ information directly to TSA, which TSA uses to conduct identity verification and a Security Threat Assessment (STA) of criminal, immigration, intelligence, and regulatory violation databases. There is no proposed change to the TSA PreCheck Application Program. 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

¹ Unless otherwise specified, for the purpose of this document, “biometrics” refers to fingerprints and/or facial imagery.

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 DHS's 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 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.

When the STA is complete, TSA makes a final determination on

eligibility for the TSA PreCheck Application Program and notifies the applicant of the decision. Most applicants generally should expect to receive notification from TSA between 3 and 60 days of the submission of their completed application. If initially deemed ineligible by TSA, applicants will have an opportunity to correct cases of misidentification and/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 ineligibility notification 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 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 the TSA PreCheck Application Program who opt-in to CBP's expedited vetting.

For TSA PreCheck Application Program applicants who have opted into GE, once their fingerprints 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.

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.

Collection Revisions: TSA PreCheck Enhancements

TSA is revising the collection to include the MyTSA PreCheck ID™, which facilitates delivery of TSA PreCheck benefits to recipients; the development of the TSA Customer Service Portal to enhance customer experience and data management; the expansion of 1:n touchless identity verification through Seamless Identity Automation experience; and the revision of post enrollment surveys to reduce customer burden to better serve the needs of the public. These new enhancements and updated surveys are all optional and do not affect an individual's status with the TSA PreCheck Application Program.

MyTSA PreCheck ID™

DHS Trusted Traveler populations are vetted, low-risk travelers who have voluntarily opted-in to receive expedited screening after undergoing a background check or STA. The MyTSA PreCheck ID is a mobile identity document that provides eligible DHS Trusted Traveler members with TSA PreCheck benefits, including identity verification at security checkpoints and 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 an airport's 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 to facilitate issuance of the ID to their mobile device. The information required to issue the ID includes biographic data: full name, date of birth, KTN; and biometric data: facial image (from a selfie). With the MyTSA Precheck ID on the individual's mobile device, within 24 hours of their flight, the individual provides their departure airport code in the MyTSA PreCheck ID app. The biographic information is only visible to the

² The FBI's Rap Back program is a continuous monitoring service that 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.

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.

individual on their MyTSA PreCheck ID app information summary page or on the ID reader when scanned for use (*i.e.* airport security checkpoint Travel Document Checker). The selfie is deleted after identify verification. Optional biographic information includes passport number and redress number.

TSA Customer Service Portal

The TSA Customer Service Portal is a user-friendly, centralized platform for TSA-vetted populations to securely view and update their profile information from various 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 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 their opt-in/opt-out selection for specific program incentives such as TSA PreCheck Touchless ID. The ability to view and update 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 will have the ability to view their applicable TSA PreCheck information and their opt-in or opt-out status for TSA PreCheck Touchless ID.

TSA Seamless Identity Automation experience

TSA is developing the Seamless Identity Automation solution to expand 1:n touchless identity verification capabilities at the security checkpoint for TSA PreCheck members using a digital ID. TSA PreCheck passengers will be able to voluntarily opt-in to the touchless experience and securely share those elements of their digital ID and flight information (*i.e.* boarding pass data) not already present in TSA's systems via their mobile wallet.

Post Enrollment Survey Revision

Instead of sending every new enrollee and renewing applicant the optional post enrollment survey, TSA is now sending the survey to only a statistically significant number of TSA PreCheck Application Program enrollees and renewing applicants. These surveys are used to gather information on the applicant's overall customer satisfaction

with the service received at an enrollment location or during their online renewal.

Estimated Annual Number of Respondents: 6,303,987.

Estimated Annual Burden Hours: 4,339,658.

Estimated Annual Cost Burden: \$468,127,340.

Dated: June 1, 2026.

Christina A. Walsh,

*Paperwork Reduction Act Officer,
Information Technology, Transportation
Security Administration.*

[FR Doc. 2026-11136 Filed 6-2-26; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[Docket No. FWS-R8-ES-2026-2344;
FXES11140800000-267-FF08EACT00]**

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Green Diamond Resource Company, Humboldt and Del Norte Counties, CA; Availability of Draft Environmental Assessment

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Green Diamond Resource Company, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally threatened marbled murrelet incidental to timber harvest operations on lands owned by the applicant, in Humboldt and Del Norte counties, California. We request public comments on the application, which includes the applicant's proposed habitat conservation plan, and the Service's Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA), Department of the Interior's (DOI) NEPA regulations, and the DOI NEPA Departmental Handbook. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before July 6, 2026.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents this notice announces, along with any comments and other materials that we receive, online in Docket No. FWS-R8-

ES-2026-2344 at <https://www.regulations.gov>.

Submitting Comments: All submissions must include the docket number [FWS-R8-ES-2026-2344] for this document. You must submit comments using one of the following methods:

- *Electronic submission:* Federal eRulemaking Portal at: <https://www.regulations.gov>. In the Search box, enter FWS-R8-ES-2026-2344, which is the docket number for this action. Then click the Search button. On the resulting page, you may submit a comment by clicking on "Comment." Please ensure that you have found the correct document before submitting your comments.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R8-ES-2026-2344, Policy and Regulations Branch, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered.

FOR FURTHER INFORMATION CONTACT:

Nora Papian, Deputy Field Supervisor, Arcata Fish and Wildlife Office, nora_papian@fws.gov (email) or 707-825-5182 (telephone). 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: We, the U.S. Fish and Wildlife Service (Service), have received an application from Green Diamond Resource Company, LLC (applicant) for a 50-year incidental take permit (ITP) for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential "take" of the threatened marbled murrelet (murrelet; *Brachyramphus marmoratus*) associated with timber harvest operations on lands owned by the applicant, in Humboldt and Del Norte counties, California. We request

public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's Environmental Assessment (EA) pursuant to the Department of the Interior's (DOI) NEPA regulations (43 CFR part 46), and the DOI's NEPA Departmental Handbook (516 DM 1).

Background

The Service listed the murrelet as threatened on October 1, 1992 (57 FR 45328) and published a revised final rule designating critical habitat on August 4, 2016 (81 FR 51348). Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538); pursuant to section 4(d) of the ESA (16 U.S.C. 1533(d)), this prohibition has been extended to the marbled murrelet by regulation in the Code of Federal Regulations (CFR) (50 CFR 17.31(a)). Under the ESA, "take" is defined to include the following activities: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened species are at 50 CFR 17.32. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our "No Surprises" regulations (50 CFR 17.32(b)(5)).

Proposed Project

The proposed project is timber harvest and land management across the applicant's ownership in Humboldt and Del Norte counties, California. The HCP Plan Area includes 380,554 acres (ac). The HCP also identifies privately-owned timberlands in Humboldt and Del Norte counties where the applicant may purchase lands in the future to be added to the HCP. The HCP Covered Activities are timber harvest and regeneration efforts, land management activities such as road maintenance, and other silvicultural activities. The applicant requests a 50-year ITP under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking 15 murrelets during the harvest of 10,252 ac of modeled marginal suitable habitat. The take would be incidental to the applicant's timber harvesting activities.

The applicant's proposed HCP contains measures to minimize and

mitigate the effects of timber harvest and land management activities on the murrelet. Conservation measures include the establishment of 300-foot buffers around occupied murrelet habitat, the use of single-tree selection harvest within buffers to accelerate the development of murrelet suitable habitat, seasonal restrictions on certain activities within buffers of occupied murrelet habitat, and the implementation of best management practices to reduce threats such as predation. Mitigation proposed by the applicant includes the protection of at least 854 ac of Suitable Habitat Reserves during the permit term, and the protection of the 76.2-ac Adaptive Management Reserve.

Proposed Action and Alternatives

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the murrelet. To comply with the requirements for an HCP under ESA section 10(a), the applicant evaluated two additional alternatives to the project. First, the applicant considered what they described in the HCP as "intensive take avoidance;" essentially, the process the applicant has utilized since the federal listing of murrelet, whereby timber stands known to be occupied by murrelets are not harvested including a 300-foot protective buffer around the occupied stand. In addition, intensive take avoidance includes implementation of protocol-level surveys for murrelets prior to timber harvest in stands where suitable nesting habitat is present. If murrelets are confirmed or suspected in a stand during surveys, those stands are deemed to be occupied and unavailable to future timber harvest. Timber harvest may proceed at stands where protocol-level surveys have shown no occupancy by murrelets. Second, the applicant considered what they described in the HCP as "passive take avoidance," whereby the applicant would avoid timber harvest in any areas where there is a perceived risk of take of a murrelet due to presence of suitable nesting habitat. The applicant considers passive take avoidance as a financially non-viable timber management strategy because it places their timberland investment on a trajectory of progressive, cumulative set-asides of forest stands for conservation without timber harvest.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's

proposed project may have effects on the murrelet and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) ITP would individually or cumulatively have effects on the murrelet and that development of an EA is appropriate pursuant to DOI's NEPA regulations and the DOI NEPA Departmental Handbook.

Next Steps

The Service will evaluate the application and comments received on the HCP and EA to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the permit to the applicant for incidental take of the murrelet.

Public Availability of Comments

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.

Authority

We provide this notice under section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (43 CFR part 46).

Vicky Ryan,

Field Supervisor, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2026-11084 Filed 6-2-26; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407-014-004-065516, #O2509-014-004-125222; LLWY]

Proposed Reinstatement of Terminated Oil and Gas Lease WYW182309, Converse County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement.

SUMMARY: In accordance with the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition from CNOOC Energy U.S.A., LLC and Chesapeake Exploration, LLC for reinstatement of terminated competitive oil and gas lease WYW182309 in Converse County, Wyoming. The lessees filed the petition for reinstatement on time and have met all filing requirements. No leases were issued that affect these lands. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Sandra Blackburn, Branch Chief, Fluid Minerals Adjudication, BLM Wyoming State Office, 5353 Yellowstone Rd., Cheyenne, Wyoming, 82009; phone: 307-775-6176; email: s75black@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The lessees agree to new lease terms for rentals and royalties at rates of \$20 per acre or fraction thereof and 20 percent, respectively. The lessees have paid the required administrative fee and have reimbursed the BLM for the cost of publishing this notice.

The lessees met the requirements for reinstatement of the lease as provided in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate the lease effective January 1, 2021, and an extension for two years from the date the lease is reinstated in accordance with 43 CFR 3108.23(d) subject to:

- Original terms and conditions of the lease;
- Increased rental of \$20 per acre;
- Increased royalty of 20 percent; and
- A 2-year lease extension.

(Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.23)

Sandra Blackburn,
Branch Chief, Fluid Minerals Adjudication.
[FR Doc. 2026-11115 Filed 6-2-26; 8:45 am]

BILLING CODE 4331-26-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1453]

Certain Boiler Protection for Absorption Refrigeration Systems and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 21, 2026, the presiding administrative law judge (“ALJ”) issued an initial determination granting a summary determination of violation of section 337. The ALJ also issued a recommended determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Robert J. Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues

raised by the recommended relief should the Commission find a violation, specifically: a general exclusion order directed to certain boiler protection for absorption refrigeration systems and components thereof imported, sold for importation, and/or sold after importation; and cease and desist orders directed to Koofang, RVGIVE, Little Bear Pocket, and VISVIC. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ’s Recommended Determination on Remedy and Bonding issued in this investigation on May 21, 2026. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant’s licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
- (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 29, 2026.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-1453”) in a prominent place on the

cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 29, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–11040 Filed 6–2–26; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 27, 2026, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Washington in the lawsuit entitled *United States v. KX Wheels, et al.* Civil Action No. 2:26–cv–00231.

In the Complaint, the United States alleges that Defendants KX Wheels, 658736 B.C. LTD, Philip Sweeney, and Stuart McKeown violated Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7522(a)(3)(B), by selling or offering for sale at least 3,609 aftermarket products that contained components that have a principal effect of bypassing, defeating, and rendering inoperative emission controls installed on motor vehicles or motor vehicle engines, and that Defendants knew or should have known that its products were being put to such use. The proposed Consent Decree resolves the claims in the Complaint with covenants not to sue, in return for injunctive relief and \$700,000 in civil penalties.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States v. KX Wheels, et al.* D.J. Ref. No. 90–5–2–1–13043. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the Proposed Consent Decree, you may request assistance by email or by mail

to the addresses provided above for submitting comments.

Scott Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2026–11058 Filed 6–2–26; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12062]

Proposed Exemption From Certain Prohibited Transactions Involving Liberty Puerto Rico 401(k) Savings Plan (the Plan or the Applicant) Located in San Juan, Puerto Rico

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This proposed exemption would permit the Plan's prior acquisition, holding, and sale of certain stock rights to purchase shares of stock in Liberty Latin America Ltd. Absent an exemption, these transactions would be prohibited by the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code).

DATES:

Exemption date: If granted, the exemption will be in effect as of September 10, 2020, through September 16, 2020.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by July 10, 2026.

ADDRESSES: All written comments and requests for a hearing must be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12062:

- via email to e-OED@dol.gov; or
- Electronically at <https://www.regulations.gov>. Follow the "Submit a comment" instructions.

Any such comments or requests must be received by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210, reachable by telephone at 1–866–444–3272. See **SUPPLEMENTARY INFORMATION**

below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT:

Anna Vaughan of the Department at (202) 693-8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption if their request includes: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a hearing request made in accordance with the requirements above when it finds that a hearing is necessary to fully explore material factual issues identified by the requestor, and will publish a hearing notice in the **Federal Register**. The Department may decline to hold a hearing if it finds that: (1) the request for the hearing does not meet the requirements stated above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified in the request can be fully explored through the submission of evidence in written (including electronic) form.

Warning: The Department will include all comments received in the public record without change and will make them available online at <https://www.regulations.gov>. The Department notes that it will include any personal information provided in the public record and online, unless the commenter claims that any of the information included is confidential, or the disclosure of such information is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but **DO NOT** submit information that you consider to be confidential or otherwise protected (such as a Social Security number or an unlisted phone number), or confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact you for

clarification, EBSA might not be able to consider your comment.

Additionally, the <https://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide them in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The proposed exemption would permit, for the period beginning September 10, 2020, and ending September 16, 2020: (1) the acquisition by the Plan from Liberty Latin America Ltd. (LLA), a party in interest to the Plan, of certain stock rights (the Rights) to purchase shares of Series C Liberty Latin America Ltd. common stock (the Series C LLA Stock), in connection with a rights offering by LLA of Series C LLA Stock (the Rights Offering); (2) the Plan's holding of the Rights during the subscription period of the Rights Offering (the Rights Offering Period); and (3) the sale of Rights held by Plan participants, at the sole direction of the 401(k) Committee of Liberty Communications of Puerto Rico LLC (the Committee) during the Rights Offering Period, provided that the conditions in Section II below are met.

The Department is considering granting this exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the Department's exemption procedures regulation.¹ This proposed exemption would provide relief from certain restrictions set forth in ERISA sections 406(a)(1)(E), 406(a)(2), 406(b)(1) and 407(a), and the excise tax imposed by Code section 4975(a) and (b) (due to the operation of parallel prohibited transaction provisions contained in Code section 4975(c)(1)). However, this exemption, if granted, would not provide relief from any other violation of law.

Benefits of the Proposed Exemption: The Applicant represents that Plan

participants acquired the Rights at no additional cost. The Plan trustee then sold the Rights at their fair market value, and Plan participants received the proceeds from the sale.

Summary of Facts and Representations²

Background

1. LLA is a telecommunications services provider. Liberty Communications of Puerto Rico LLC (LCPR), a subsidiary of LLA, sponsors the Plan, which is a defined contribution plan. At the time of the Rights Offering, the Plan had 328 participants and beneficiaries, and approximately \$31,671,364.62 in assets.

2. The Plan trustee is Oriental Bank and Trust (the Trustee). The Trustee executes investment directions in accordance with Plan participants' written instructions.

3. The Plan permits participants to direct the investment of their Plan accounts into several investment alternatives. At the time of the Rights Offering, the investment alternatives included employer securities issued by LLA. As of September 8, 2020, the Plan held \$15,908 in Series A LLA common stock (the Series A LLA Stock), which represented approximately 0.05% of total Plan assets. As of the same date, the Plan held \$201,434.23 in Series C LLA Stock, which represented approximately 0.636% of total Plan assets.³

Description of LLA Stock

4. The Applicant states that unlike some companies where the value of a particular class or series of common stock is based on the assets, businesses, and investments that the issuing company has assigned to the class or series (also known as a "tracking stock"), Series A LLA Stock and Series C LLA Stock (together or individually,

² The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations made by the Applicant in Application D-12062 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption may cease to be effective, with such determination made at the Department's sole discretion. See 29 CFR 2570.49.

³ However, participants were not permitted to acquire additional shares of Series C LLA Stock at the time of the Rights Offering.

¹ 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department is proposing this exemption under its sole authority. Any references hereinafter to sections of ERISA shall be deemed to refer to the corresponding sections of the Code, unless indicated otherwise.

LLA Stock) are intended to reflect the value of LLA's business as a whole.⁴

Prior to the Rights Offering

5. The Applicant represents that Plan participants who held LLA Stock (and thus would receive the Rights) were notified of the Rights Offering by: (a) a two-page disclosure, titled "Liberty Puerto Rico 401(k) Savings Plan—Important Information on the Liberty Latin America LTD. Rights Offering"; and (b) a prospectus provided to all LLA shareholders. The disclosure noted in (a) informed Plan participants that no action was required on their part to

receive proceeds from the sale of the Rights.

The Rights Offering

6. On September 10, 2020, LLA issued Rights to all holders of LLA Stock, including the Plan.⁵ Each holder of LLA Stock received Rights equal to the number of shares of LLA Stock held by the shareholder, multiplied by 0.2690. Each Right gave each recipient shareholder the right to purchase one share of Series C LLA Stock for \$7.14. This represented an approximately 25% discount to the volume weighted average trading price (the VWAP) of the

Series C LLA Stock, beginning on August 31, 2020 and ending on and including September 2, 2020.⁶ The Applicant states that the Rights permitted the purchase of only a whole number of shares, and any fractional shares were rounded up to the next whole share.⁷

7. The following table shows: the total number of shares of LLA Stock eligible to receive the Rights, and the market closing prices of Series A and C LLA Stock on September 10, 2020, September 16, 2020, and September 25, 2020.

	Shares outstanding from September 8, 2020, the record date of the offering, through September 10, 2020 ⁸	Market closing price on September 10, 2020 ⁹	Market closing price on September 16, 2020 ¹⁰	Market closing price on September 25, 2020 ¹¹
Series A LLA Stock	48,891,293 (1,640 shares held by the Plan).	\$9.51	\$8.15	\$7.85
Series C LLA Stock	131,375,442 (21,270 shares held by the Plan).	9.31	8.02	7.75

8. The following table summarizes the Stock held by the Plan on September 10,

2020, and the Rights received by the Plan on September 10, 2020, on behalf

of all participant shareholders of Series A and C LLA Stock.

Series of stock	Number of shares held by plan ¹²
Series A LLA Stock held on the ex-dividend date	1,640
Series C LLA Stock held on the ex-dividend date	21,270
Total Series A LLA Stock and Series C LLA Stock held on the ex-dividend date	22,910
Number of Rights Received by Plan (total LLA Stock multiplied by 0.2690, including rounding up to the nearest whole share for each participant)	6,164

Acquisition of the Rights

9. The Applicant states that the Committee did not exercise discretion regarding the Plan's acquisition of the Rights. The Rights were automatically provided to all holders of LLA stock, including Plan participants, in a manner that was consistent with provisions of the Plan for the individually directed investment of participant accounts.

Disposition of the Rights: Sale Directed by the Committee

10. The Applicant represents that at the time of the Rights Offering, the Plan document did not permit Plan participants to acquire additional shares of Series C LLA Stock in their Plan accounts beyond those previously acquired by the Plan participants. The Applicant states that because the exercise of the Rights to purchase additional shares of Series C LLA Stock was not permitted, the Committee determined that it would be prudent

and in the best interests of Plan participants to direct the Trustee to sell the Rights on the open market prior to the end of the Rights Offering Period, in order to allow participants to benefit from the value of the Rights. Further, the Applicant states that the Committee directed the Trustee to sell the Rights as soon as possible during the Rights Offering Period in order to secure a higher return for the Plan participants. The Applicant states that, as the price for Rights such as these generally declines toward the end of the offering

⁴ The Applicant states that although LLA issued Series B LLA Stock, no Plan participant accounts held Series B LLA Stock.

⁵ Holders of all series of LLA Stock received Rights, but because Plan participants were not permitted to hold Series B LLA Stock, they only received Rights in respect of Series A and Series C LLA Stock.

⁶ The Applicant states that the subscription price was based on advice from JPMorgan and was set at a discount to the theoretical ex-rights price (TERP) of the shares. A TERP is the market price that a stock will theoretically have following the completion of a rights offering, taking into account any changes in the company's overall value due to the issuance of additional shares at a discount. The Applicant represents that the actual subscription

price of \$7.14, was equal to a 25% discount to the VWAP of the Series C LLA Stock over a three-day period beginning on August 31, 2020, and ending on (and including) September 2, 2020.

⁷ The Applicant states that since no fractional Rights were issued, it was not possible to purchase a fractional share in the Rights Offering and there would have been no fractional shares to round.

⁸ As reported in the Rights Offering prospectus, September 8, 2020, was the Rights distribution record date. The Applicant represents that, as described in the Rights Offering prospectus, because of "due bill" trading procedures required by NASDAQ in connection with the Rights Offering, the number of Rights received was actually calculated based on shares of LLA Stock held by participants on September 10, 2020.

⁹ As discussed herein, LLA stockholders of record were issued Rights on September 10, 2020. The market closing price for each Right on September 11, 2020 was \$1.76.

¹⁰ As reported by the Applicant and discussed herein, the Trustee sold the Plan's Rights on September 16, 2020.

¹¹ As stated in the Rights Offering prospectus, the Rights Offering expired on September 25, 2020, 5:00 p.m., New York City time.

¹² Because Plan participants' accounts may own fractional shares, the Plan relied on its stock purchase account to round the number of Shares to whole numbers, since only whole shares can be traded on the open market. The number of shares of Series A and Series C stock includes shares in the Plan's stock purchase account.

period, this was a prudent decision by the Committee to secure a meaningful return for their participants. Further, the Applicant represents that: as a result of the Committee's direction to the Trustee, the participants received at least fair market value for the sale of their Rights; and if the Committee had not sold the Rights, the participants would have received no benefit in connection with the Rights Offering since the Plan did not permit acquisition of additional shares of Series C LLA Stock.

11. The Rights were received by the Trustee on September 16, 2020, and held in a separate fund established under the Plan to hold the Rights when they were issued. The Rights were credited to participants' Plan accounts based on participants' respective holdings of LLA Stock.¹³

12. On September 16, 2020, the Trustee sold a total of 6,164 Rights on behalf of 328 participants over the Nasdaq Global Select Market in "blind transactions" for \$1.1227 per Right (pre-commission) for total proceeds of \$6,920.3228 (pre-commission).¹⁴ The settlement from the sale of the Plan's Rights was also completed by September 16, 2020.¹⁵ The Applicant states that the custodian of the Plan's assets, American Trust Custody (formerly known as MidAtlantic Trust Company), effected the sale of the Rights through National Financial Services, LLC (NFS), an unrelated broker, and that NFS was not an affiliate of the Trustee at the time of the sale of the Rights.¹⁶

¹³ The Department presumes that the Committee could have passed the Rights through to participants. However, because the Plan document prohibited participants from acquiring additional shares of Series C LLA Stock, the participants in that scenario would have only had one option: selling the Rights on the open market.

¹⁴ The average sale price per Right received by Plan participants (post-commission) was \$1.062675, and the total proceeds received by Plan participants for sale of Rights (post-commission) was \$6,550.33.

¹⁵ The Department notes that a transaction generally will not be a prohibited transaction if that transaction is an ordinary "blind" purchase or sale of securities through an exchange where neither the buyer nor the seller (nor the agent of either) knows the identity of the other party involved. In this regard the Department notes that the ERISA Conference Report states that "[i]n general, it is expected that a transaction will not be a prohibited transaction (under either the labor or tax provisions) if the transaction is an ordinary "blind" purchase or sale of securities through an exchange where neither buyer nor seller (nor the agent of either) knows the identity of the other party involved." See H.R. Rep. 93-1280, 93rd Cong., 2d Sess. 307 (1974); see also ERISA Advisory Opinion 2004-05A (May 24, 2004).

¹⁶ In connection with the sale of the Rights, the Plan only paid the Securities Exchange Commission fee and NFS received a fee of \$370.00 (\$0.06 per Right sold) for the sale of the Plan's Rights. The Applicant states that this was a trade-driven fee

13. The Applicant states that proceeds from the sale of the Rights were allocated proportionally to the relevant participants' accounts based on the amount of Rights owned by each such participant and invested in one of the Plan's default alternatives. The Applicant states that Plan participants were informed through the disclosure materials of this default investment and of their ability to contact the recordkeeper to change the investment of the proceeds.

14. The Applicant states that the Committee prudently and loyally determined on behalf of the Plan that: (a) the Plan's acquisition, holding and sale of the Rights could proceed on the terms established by the Committee; and (b) the Plan's participants received at least the fair market value for the sale of the Rights. The Department notes that this exemption requires that the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times, and the Plan must retain for six years the records necessary for the Department to ascertain whether the conditions for relief have been adhered to.

15. The Applicant represents that it filed the exemption application after the Rights Offering, when the appropriate review and approvals were concluded.

ERISA Analysis

16. ERISA section 406(a)(1)(E) provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if they know or should know that such transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of ERISA section 407(a). ERISA section 406(a)(2) provides that a fiduciary of a plan shall not permit the plan to hold any employer security if they know or should know that holding such security violates ERISA section 407(a).

17. ERISA section 407(a)(1)(A) provides that a plan may not acquire or hold any "employer security" which is not a "qualifying employer security." ERISA section 407(d)(1) defines "employer securities," in relevant part, as securities issued by an employer of employees covered by the plan, or by an affiliate of such employer. ERISA section 407(d)(5) provides, in relevant part, that "qualifying employer securities" are stock or marketable obligations.

generated from trading on the open market and that neither the Trustee, nor Oriental Pension Consultants (the Plan's third-party administrator in 2020), nor American Trust Custody benefited from this fee.

18. The Applicant represents that the Plan was a holder of record of Series A and Series C LLA Stock issued by LLA on the date the Rights were acquired by the Plan, so the acquisition of the Rights by the Plan was an acquisition of an "employer security" under ERISA section 407(d)(1). The Applicant represents that since the Rights did not constitute either stock or marketable obligations for indebtedness, the Rights were not "qualifying employer securities" under ERISA section 407(d)(5). Therefore, the Applicant represents that the Plan's acquisition and holding of the Rights would violate ERISA sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A), unless an exemption is granted by the Department.

19. In addition, ERISA section 406(b)(1) prohibits a plan fiduciary from dealing with the assets of a plan in their own interest or own account. Further, ERISA section 406(b)(2) prohibits a fiduciary from acting in any transaction involving a plan on behalf of a party whose interests are adverse to those of the plan or the plan's participants or beneficiaries. The Applicant requested relief from ERISA section 406(b)(1) and (2) as a precaution in the event the Committee's direction to the Trustee to sell the Plan's Rights, in accordance with a prior fiduciary decision to prohibit additional acquisitions of LLA Stock, could be construed as dealing with the assets of the Plan in its own interest or for its own account or acting on behalf of a party whose interests are adverse to those of the Plan.¹⁷ If granted, the exemption will be effective for the period September 10, 2020, through September 16, 2020.

Statutory Findings

The Department has tentatively made the following required findings under ERISA section 408(a) with respect to the proposed exemption:

20. "Administratively Feasible." The Department has tentatively determined that the proposal is administratively feasible for the Department because, among other things, the Plan participants received their Rights pursuant to LLA's independent

¹⁷ The Department notes that the determination whether the Committee exercised its fiduciary authority in a manner that violated ERISA section 406(b)(1) and (b)(2) when it directed the sale of Rights held by the Plan on behalf of participants is subject to a factual inquiry that is outside the scope of this proposed exemption. Nevertheless, if the Committee's exercise of discretion also benefitted the Applicant, an entity in which the Committee has an interest that may affect the Committee's best judgment as a fiduciary, then such exercise of discretion may raise questions about whether the Committee acted in a manner that complies with ERISA section 406(b)(1) and (b)(2).

corporate act in which all shareholders, including the Plan participants, were treated in a like manner with respect to the acquisition and holding of the Rights, with the exception that Plan participants were not permitted to exercise the Rights because, in accordance with the Plan document at the time of the Rights Offering, Plan participants were not permitted to acquire additional shares of Series C LLA Stock.

21. *"In the Interest of the Plan."* The Department has tentatively determined that the proposed exemption is in the interest of the Plan and its participants and beneficiaries because, among other things, (a) each Plan participant received their Rights at no additional cost, and (b) each Plan participant received an average price of \$1.1227 for each Right.¹⁸

22. *"Protective of the Plan."* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, (a) the Rights were sold by the Trustee on the Nasdaq Global Select Market for market value in blind transactions on the NASDAQ; (b) the Plan did not pay any fees or commissions in connection with the acquisition or holding of the Rights; (c) in connection with the sale of the Rights, the Plan only paid the Securities Exchange Commission fee and a commission to an unrelated third party broker, which were charged solely against the price received by the Plan participant for whom the Trustee sold the Right; and (d) the Plan did not pay any fees in connection with the exemption request.¹⁹

Notice to Interested Persons

The Applicant will provide notification to interested persons (NTIP) as agreed to with the Department: (1) by posting the NTIP on the LLA intranet site and in the LLA's sites customarily used for posting notices to employees regarding employment matters; and (2) via a return-receipt email that links to the information posted on the LLA intranet site within 7 days of the publication of the notice of proposed exemption in the **Federal Register**. The NTIP will include a copy of the notice of proposed exemption, as it appears in the **Federal Register**, plus a copy of the Supplemental Statement required pursuant to 29 CFR 2570.43(a)(2), which

advises interested persons of their right to comment and to request a hearing.

The Department will not consider comments and requests for a hearing received by the Department after 37 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments become part of the disclosable administrative record. Further, comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan and its participants and beneficiaries and in a prudent manner in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of plan participants and beneficiaries;

(3) The proposed exemption, if granted, would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption, if granted, would be subject to the express

condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the Department's exemption procedures regulation.²⁰ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested by the Applicant to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Transactions

This exemption would provide relief from the prohibited transactions provisions of ERISA sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A), and the excise tax imposed by Code section 4975(a) and (b) (due to the operation of a parallel prohibited transaction provision contained in Code section 4975(c)(1)), for the period beginning September 10, 2020, and ending September 16, 2020, with respect to:

(a) The acquisition by the Liberty Puerto Rico 401(k) Savings Plan (the Plan) of certain stock subscription rights (the Rights), pursuant to a stock rights offering (the Rights Offering) by Liberty Latin America Ltd. (LLA), for the purchase of shares of Series C LLA common stock (Series C LLA Stock);

(b) the holding of the Rights by the Plan during the subscription period of the Rights Offering (the Rights Offering Period); and

(c) the sale of the Rights held by Plan participants, at the direction of the 401(k) Committee of Liberty Communications of Puerto Rico LLC (the Committee), prior to the expiration of the Rights Offering Period; provided the conditions set forth below in Section II are always satisfied.

Section II. Conditions

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of LLA as a

¹⁸ In other words, each share of Stock owned by participants prior to the Rights Offering yielded an additional benefit of \$0.33.

¹⁹ The Applicant represents that the Committee did not exercise any additional discretion with respect to the acquisition and holding of the Rights.

²⁰ 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). For purposes of this proposed exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

corporate entity, without the exercise of any discretion on the part of the Committee;

(b) All holders of Series A LLA common stock (Series A LLA Stock) or Series C LLA Stock (individually or together, LLA Stock), including the Plan, were issued the same proportionate number of Rights based on the number of shares of LLA Stock held by each shareholder;

(c) For purposes of the Rights Offering, all holders of Series A LLA Stock or Series C LLA Stock, including the Plan, were treated in a like manner, with the exception that the Plan participants were not permitted to exercise the Rights due to the fact that new investments in LLA Stock were not permitted under the Plan;

(d) The acquisition of the Rights by the Plan was made in a manner that was consistent with provisions of the Plan for the individually directed investment of participant accounts;

(e) The Committee directed the Plan trustee, Oriental Bank and Trust (the Trustee), to sell the Rights and did not exercise any additional discretion with respect to the acquisition and holding of the Rights;

(f) The sale of the Rights was effected in a prudent manner on the open market so that the Plan participants received at least fair market value for the Rights sold;

(g) The Plan did not pay any brokerage fees, commissions, subscription fees, or other charges in connection with the acquisition and holding of the Rights. In connection with the sale of the Rights, the Plan only paid the Securities Exchange Commission fee and a commission paid to National Financial Services, LLC, a broker that is unrelated to the Trustee or its affiliates, which were charged solely against the price received by the Plan participant for whom the Trustee sold the Right. The Committee's decision to allow this fee and commission must have been prudent, consistent with their duties under ERISA Section 404, and the fee and commission must have been reasonable, consistent with ERISA Section 408(b)(2);

(h) The Plan did not pay any fees in connection with the Applicant's request for this exemption;

(i) The Committee prudently and loyally determined on behalf of the Plan that: (1) the Plan's acquisition, holding and sale of the Rights could proceed, and (2) the Plan's participants received at least the fair market value for the sale of the Rights;

(j) The LLA maintains for a period of six (6) years from the date of the publication of the exemption, in a

manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (k)(1)—(4) below to determine whether conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of LLA, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than LLA shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (k) below;

(k) Notwithstanding any provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (j) above shall be unconditionally available at their customary location during normal business hours to:

(1) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Liberty Communications of Puerto Rico LLC (LCPR) or any duly authorized representative of LCPR;

(3) the Plan fiduciary or any duly authorized representative of the Plan fiduciary; and

(4) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(l) For a period of six (6) years from the date of the publication of the exemption, the Plan must provide to the Department the records necessary to demonstrate that the conditions of this exemption, as amended, have been met, within 30 days from the date the Department requests such records; and

(m) All of the material facts and representations made by the Plan that are set forth in the Summary of Facts and Representations are true and accurate at all times. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.

Exemption date: If granted, the exemption will be effective from September 10, 2020, the date that the Plan received the Rights, through September 16, 2020, the last date the Rights were sold on the Nasdaq Global Select Market.

Signed at Washington, DC, this 27th day of May 2026.

Christopher Motta,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2026-11065 Filed 6-2-26; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. L-12076]

Proposed Exemption Involving the International Brotherhood of Electrical Workers Local Union No. 99 Joint Apprenticeship Training Committee Fund (the Fund) Located in Cranston, Rhode Island

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This proposed exemption would allow the Fund to purchase property from Local Union 99 Realty Corporation. Absent an exemption, the purchase would violate certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA). The purchase is expected to save the Fund approximately \$45,000 per year.

DATES:

Exemption date: If granted, this proposed exemption will be effective as of the date of publication in the **Federal Register**.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by July 20, 2026.

ADDRESSES: All written comments and requests for a hearing must be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L-12076:

- via email to e-OED@dol.gov; or
- Electronically at <https://www.regulations.gov>. Follow the

"Submit a comment" instructions.

Any such comments or requests must be received by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210 1-866-444-3272. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed ChukSORji-Keefe of the Department at (202) 693–8540. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption if their request includes: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which they would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above when the Department finds that a hearing is necessary to fully explore material factual issues identified by the requestor, and the Department will publish a hearing notice in the **Federal Register**. The Department may decline to hold a hearing if it finds that: (1) the hearing request does not meet the requirements stated above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: The Department will include all comments received in the public record without change and will make them available online at <https://www.regulations.gov>. The Department notes that it will include any personal information provided in the public record and online, unless the commenter claims any of the information included is confidential or the disclosure of such information is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but **DO NOT** submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) and confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EBSA might not be able to consider your comment.

Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide that information in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Summary of Facts and Representations¹

The Fund

1. The Fund, also referred to herein as the “Applicant,” is a multiemployer welfare benefit plan based in Cranston, Rhode Island. The Fund finances the International Brotherhood of Electrical Workers Local Union No. 99 Joint Apprenticeship Training Committee (the JATC) and the JATC Training Program. The Fund is administered by six trustees (the Trustees); three of whom are elected by management contractors (the Employer Trustees); and three of whom are elected by Union members (the Union Trustees). The Fund had \$4,924,206 in total assets and approximately 800 participants as of December 31, 2024.

The Union

2. The Union is IBEW Local 99, a local chapter of the International Brotherhood of Electrical Workers (the IBEW). Through the Fund, the Union provides training for its members in all aspects of the electrical industry. The Union owns and controls Local Union 99 Realty Corporation (Realty Corp), a real estate holding company that holds title to and operates various real estate owned by the Union.²

¹ The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations made by the Applicant in Application L–12076 are true and complete and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption may cease to be effective, with such determination made at the Department's sole discretion. See 29 CFR 2570.49.

² The Department understands that Realty Corp is wholly-owned and controlled by the Union. For the sake of simplicity when discussing the Property, throughout this proposed exemption, the Union is referred to as the owner of the Property.

The Property

3. The property is a one-story metal and masonry office building located at 40 Western Industrial Drive, Cranston, Rhode Island that is owned by Realty Corp. (the Property).³ According to the Applicant, as a lessee on the Property the Union has spent approximately \$900,000 to improve and customize the Property to meet the needs of the JATC and the Fund. In this regard, classrooms, office space and laboratories were installed; and fire systems, electrical facilities, computer wiring, ceilings and floors were upgraded, to make the building suitable for training electrical apprentices.

The Leasing Arrangement

4. The Fund has leased office and classroom space on the Property under multiple leases since 2011 and has paid a total of approximately \$1,973,461 in rent to the Realty Corp up to and including 2025.⁴ According to the Applicant, these leases were/are intended to comply in all respects with (and be covered by) the following statutory administrative class exemptions:

- ERISA section 408(b)(2) for the lease of office space by the Fund from the Union; and
- PTE 78–6, for the lease of classroom space by the Fund from the Union.⁵

5. The Applicant represents that the Fund's use of the Property has always been appropriate, beneficial, and critical in carrying out the Fund's central training purposes.⁶ Further, according to the Applicant, the prior and existing lease rental amounts and other terms and conditions between the Union and the Fund have been reasonable and appropriate and have been, at a minimum, as favorable to the Fund as an arm's length lease agreement transaction between the Union and an unrelated party would have been.

³ Realty Corp. acquired the property for \$1 million on November 30, 2010, from G.A.M. Realty, LLC. The Applicant represents that G.A.M. Realty, LLC is not a party in interest to the Fund and has no connection to the Fund, the Union, or Realty Corp.

⁴ For the years ending December 31, 2023 and December 31, 2024, the annual rental amounts paid by the Fund to the Realty Corp were \$120,099 (as of December 31, 2023) and \$184,080 (as of December 31, 2024).

⁵ See 43 FR 23024 (May 30, 1978), as corrected by 43 FR 25492 (June 13, 1978). The Department expresses no opinion as to whether the leasing arrangement has satisfied or currently satisfies requirements of PTE 78–6 with respect to classroom space and ERISA section 408(b)(2) with respect to office space comprising the Property.

⁶ The Applicant represents that the Union does not use any portion of the Property for any non-Fund purposes.

The Proposed Purchase

6. The Applicant seeks an exemption that would permit the Fund to purchase the Property, which is located in Cranston, Rhode Island, from Realty Corp, an entity that is 100% owned and controlled by the Union. The Union is a party-in-interest with respect to the Fund.

Reasons for the Purchase

7. The Fund proposes to purchase the Property because: (a) the Property was originally acquired by the Union for the specific purpose of serving as a training facility; (b) since its acquisition, the Property has received approximately \$900,000 in renovations and capital improvements, which the Fund has directly benefitted from; (c) the Property is now a critical component of the Local #99 JATC Training Program; and (d) the Fund has sufficient liquid assets to pay for the down payment. In addition, the Applicant represents that the Fund's Employer Trustees solely and unanimously approved the Purchase.

ERISA Analysis

8. Absent an exemption, the Purchase would not be permitted under various sections of ERISA. Section 406(a)(1)(A) provides, in relevant part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he or she knows or should know that such transaction constitutes a direct or indirect sale of property between a plan and a party in interest. The term "party in interest" is defined under ERISA section 3(14)(A) to include a fiduciary such as the Fund's Trustees. Under ERISA section 3(14)(D), the term party in interest also includes an employee organization, any of whose employees or members are covered by such plan. Here, the Union is a party in interest with respect to the Fund because it is an employee organization whose members are covered by the Fund. Therefore, the Fund's Purchase of the Property from the Union would otherwise violate ERISA section 406(a)(1)(A).

9. ERISA section 406(a)(1)(D) provides that a fiduciary shall not cause a plan to engage in a transaction if he knows or should know that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Here, the Fund's transfer of cash to the Union in exchange for the Property would otherwise violate ERISA section 406(a)(1)(D).

10. ERISA section 406(b)(1) prohibits a plan fiduciary from dealing with a plan's assets ". . . in his own interest

or for his own account." ERISA section 406(b)(2) prohibits a plan fiduciary "in his individual or in any other capacity [from acting] in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries." ⁷

Terms of the Purchase Required by the Exemption

11. The Purchase will be a one-time transaction for cash. An independent fiduciary (the Independent Fiduciary) who must be prudently hired by the Fund's Employer Trustees, will represent the interests of the Fund and its participants and beneficiaries for all purposes with respect to the Purchase. The Independent Fiduciary will review and approve the terms and conditions of the Purchase on behalf of the Fund and determine whether it is prudent for the Fund to proceed with the Purchase. The Independent Fiduciary will also determine in writing that the Purchase and any related terms and conditions are in the interest of, and protective of, the Fund and its participants and beneficiaries. The Independent Fiduciary will review the Appraisal Report (discussed below), confirm that the underlying methodology is reasonable and accurate, confirm that the valuation of the Property was reasonably derived, and ensure that the Independent Appraiser (discussed below) renders an updated fair market valuation of the Property as of the date of the Purchase. In the event the Fund finances the Purchase, it will do so with an unrelated, third-party bank and on terms that the Independent Fiduciary determines in writing are prudent and in the interest of, and protective of the rights of, the Fund.

The Independent Fiduciary

12. The Applicant states that Gallagher Fiduciary Advisors, LLC (Gallagher) will act as the Independent Fiduciary and represent the Fund with respect to the Purchase. Gallagher, along with its predecessor firm, has been carrying out independent fiduciary decision-making assignments for ERISA-

covered plans since 1989 and represents that it has no relationship with either the Fund or the Union, except for its role as the Fund's Independent Fiduciary with respect to the Purchase. Gallagher represents that the fee for its services as Independent Fiduciary for the Fund will be less than 1% of its annual revenues for its prior income tax year.

The Independent Appraiser

13. Peter M. Scotti & Associates of Providence, Rhode Island (Scotti) was retained by the Employer Trustees to serve as the Independent Appraiser with respect to the valuation of the Property. Scotti represents that it has no relationship with any party in interest with respect to the Fund, the Union or Realty Corp. Scotti further represents that the percentage of projected revenues for the current federal income tax year (including amounts received from preparing the appraisal report) that it will derive from parties in interest to the Fund represents less than 1% of the appraiser's revenue from the prior federal income tax year.

14. R. Peter Tache, a Scotti staff appraiser, inspected the Property on February 7, 2019, and again on or about September 29, 2022. Mr. Tache states that he has no present or contemplated future interest in the Property nor any personal interest or bias with respect to the parties involved in the Purchase.

15. Mr. Tache produced an Appraisal Report dated October 3, 2019, which he subsequently updated on October 7, 2022 (with an effective date of September 29, 2022) (referred to collectively as the Appraisal Report).⁸ Mr. Tache determined that the fair market value of the Property was \$1,610,000 as of September 29, 2022 and will update the Appraisal Report on the date of the closing of the Purchase, if the proposed exemption is granted.

The Independent Fiduciary Analysis

16. The Independent Fiduciary represents that the proposed transaction is in the best interests of the Fund because: (a) the Fund will save approximately \$45,000 per year in expenses related to the Property;⁹ (b)

⁷ The Applicant states that the Union Trustees recused themselves from all matters relating to the transaction. However, the Department cannot opine as to whether the Union Trustees effectively recused themselves from all aspects of the Purchase so as to negate a violation of ERISA section 406(b)(1) and 406(b)(2), because that determination is inherently factual. This exemption would not extend relief to the Purchase to the extent the Union Trustees did, in fact, exercise any fiduciary authority or discretion to cause the Fund to engage in the Purchase in order to benefit themselves or their own interests.

⁸ The Independent Fiduciary requested that Scotti perform an updated Appraisal of the Property as of September/October, 2022.

⁹ In its report dated October 28, 2024, the Independent Fiduciary compared the current expenses prior to the Purchase and the projected expenses after the Purchase and determined a "Decrease in Total Expense" after the Purchase of \$45,000 per year on average. The Independent Fiduciary considered: the amount of building expenses that were paid at the Realty Corp. level; in the event that purchase is financed, projected debt service payments of \$57,954 per year, which

the JATC and the Fund have historically operated the JATC's Training Program at the Property, which is centrally located for students and journeymen, with customized classroom and training space that is sufficient for current and future needs; and (c) the Fund will not reimburse or otherwise pay the Union for the cost of the improvements (\$900,000) that the Union made to make the Property suitable for the Training Program. Furthermore, the Independent Fiduciary represents that there are no alternative suitable properties available for the Fund to purchase or lease in the area.

17. The Independent Fiduciary considered whether, in lieu of purchasing the Property, the Fund could continue leasing the Property. In this regard, the Independent Fiduciary reviewed the Appraisal Report for the Property, analyzed commercial listings for properties available for lease and their suitability for the Fund, and held conversations with commercial real estate brokers regarding potential leasing options. Based on this research and other data, the Independent Fiduciary determined that there were no comparable properties available for lease with similar benefits and location as the Property.

18. The Independent Fiduciary states that due diligence studies prepared for the Fund show that the Property is in good condition, has no environmental conditions, and is zoned properly for use as a training school. Further, the Independent Fiduciary states that the Fund can afford to purchase the Property while retaining reserves that are more than sufficient to support the operation of the Fund's programs.

19. The Independent Fiduciary notes that the Purchase Agreement requires the Union to pay all closing costs, fees, policy premiums, and taxes including legal fees related to the Purchase, whereas in Rhode Island, closing costs in arm's length transactions are customarily split between the seller and buyer. Therefore, the Independent Fiduciary notes that the Purchase will save the Fund approximately \$52,500¹⁰

is based on a twenty-year loan with monthly payments calculated at the current 6.58% interest rate; and \$10,000 per year allocated to a "Repair and Replacement Reserve," which is roughly equivalent to the scheduled repairs estimated to be required. Notwithstanding the above, the Independent Fiduciary will make any determination required by this exemption based on the most current information and assumptions available.

¹⁰ The Independent Fiduciary estimates that the closing costs for the transfer of the Property, which are typically shared between the buyer and seller, would total \$105,000. These expenses are hypothetical and are only used as an example of

in expenses as opposed to purchasing a similarly priced property from a third party.

20. The Independent Fiduciary represents that the Fund's net assets following the Purchase should be approximately \$3,643,000, which represents almost five years of operating expenses on hand for the Fund that is well above the six-month standard.¹¹ The Independent Fiduciary represents that it will review any loan commitments and proposals provided to the Fund to finance the Purchase to ensure that such financing supports the Purchase and does not include any terms which will handicap the Fund's ability to support its training mission.

21. The Independent Fiduciary represents that its ultimate approval of the Purchase will be subject to the following post-exemption caveats: (a) a review and agreement on the terms of a final agreement for the Purchase; (b) a redetermination of the market value of the Property as of the date of the Purchase; and (c) the Independent Fiduciary's satisfaction that all conditions to closing, as set forth in the Purchase Agreement and related instruments have been satisfied.

*Other Conditions of the Proposed Exemption Include*¹²

22. The Fund will not incur any fees, costs, commissions, or other expenses as a result of the Purchase, other than the necessary and reasonable fees that will be paid to the Independent Appraiser, or any other party in interest. In the event the Fund finances the Purchase, it must do so with an unrelated, third-party bank and on terms that the Independent Fiduciary determines in writing are prudent and in the interest of, and protective of the rights of, the Fund. The terms and conditions of the Purchase must be no less favorable to the Fund than the terms the Fund would receive under similar circumstances in an arm's length

what the expenses could be if closing costs were paid. According to the Independent Fiduciary, these expenses include an estimated brokerage fee of \$84,600; Rhode Island Real Estate Conveyance Tax (\$4.60 per \$1000 until September 30, 2025, and increased to \$7.50 per \$1000 on October 1, 2025); and certain additional closing costs which will be paid by the Fund alone which include lending fees of between .50% and .75%, lender legal fees at \$3,500, and the additional cost of an appraisal. The Independent Fiduciary will make any determination required by this exemption based on the most current information and assumptions available.

¹¹ The Independent Fiduciary states that every training fund should have 6 months of operating expenses on hand.

¹² This summary does not describe all the conditions set forth in the proposed exemption. To see all the conditions applicable to the Purchase, please see the Proposed Exemption section below.

transaction with an unrelated party, and the Purchase must not be part of an agreement, arrangement or understanding designed to benefit the Union. The parties are subject to record maintenance conditions and are required to provide the Department with records necessary to demonstrate that the conditions of this exemption have been met, within 30 days from the date the Department requests such records. Finally, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

The Department's Statutory Findings

23. Administratively Feasible. The Department has tentatively determined that the proposed exemption is administratively feasible because the Purchase will be a one-time transaction for cash overseen by an Independent Fiduciary that is prudently selected by the disinterested Employer Trustees.

24. In the Interest of the Fund and its Participants and Beneficiaries. The Department has tentatively determined that proposed exemption is in the interest of the Fund and its participants and beneficiaries because: the Fund will save at least approximately \$45,000 per year in operating expenses from the Purchase; the Fund will be able to realize the benefits of real estate appreciation from ownership over time (as well as avoiding increases in rent from such appreciation); and the Union will pay all closing costs in connection with the Purchase.

25. Protective of the Rights of the Participants and Beneficiaries. The Department has tentatively determined that the proposed exemption is protective of the rights of the Fund and its participants and beneficiaries because, among other things, the Independent Fiduciary must approve the terms and conditions of the Purchase on behalf of the Fund and take any action required to enforce the rights of the Fund.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be given to interested persons, which include Union members and Fund participants and beneficiaries, within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. The Notice will be provided to interested persons by first class mail, with postage prepaid. In addition, a copy of the notice will be posted on the bulletin board in the Union Hall. Such Notice will contain a copy of the proposed exemption, as published in the **Federal Register** and a supplemental statement, as required

pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and/or request a hearing with respect to the pending exemption. The Department will not consider comments and requests for a hearing received by the Department after forty-five (45) calendar days from the date of the publication of the Notice in the **Federal Register**. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments become part of the disclosable administrative record. Further, comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent manner in accordance with ERISA section 404(a)(1)(b);

(2) Before an exemption may be granted under ERISA section 408(a), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times, and that the application accurately describes all material terms

of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a), and in accordance with the Department's exemption procedures regulation set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) will not apply to the Fund's purchase (the Purchase) of improved real property (the Property), located at 40 Western Industrial Drive, in Cranston, Rhode Island, from Local Union 99 Realty Corporation (Realty Corp), an entity that is 100% owned and controlled by IBEW Local 99 (the Union), a party in interest with respect to the Fund, provided:

(a) The Purchase is a one-time transaction for cash. In the event the Fund finances the Purchase, it will do so with an unrelated, third-party bank and on terms that a prudently-appointed independent fiduciary (the Independent Fiduciary) determines in writing are prudent and in the interest of, and protective of the rights of, the Fund;

(b) The Fund pays the lesser of either: (1) \$1,610,000; or (2) the fair market value of the Property as established by a qualified independent appraiser (the Independent Appraiser) in an appraisal report of the Property that is updated on the date of the Purchase;

(c) The terms and conditions of the Purchase are no less favorable to the Fund than the terms the Fund would receive under similar circumstances in an arm's length transaction with an unrelated party;

(d) The Fund pays no fees, costs, commissions, or other expenses, other than necessary and reasonable fees, to any party in interest in connection with the Purchase;

(e) The Purchase is not part of an agreement, arrangement or understanding designed to benefit the Union;

(f) The Independent Appraiser must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Appraiser by the Fund or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Appraiser's work; or waives any rights, claims or remedies of the Plan or its participants and

beneficiaries under ERISA, the Code, or other Federal and state laws against the Independent Appraiser with respect to the Purchase;

(g) A qualified independent fiduciary (the Independent Fiduciary), prudently hired by the Fund's Board of Trustees:

(1) Represents the Fund's interests for all purposes with respect to the Purchase;

(2) Determines in writing that the Purchase is in the interest of, and protective of, the Fund and the participants of the Fund, based on the most current information and assumptions;

(3) Reviews and approves the terms and conditions of the Purchase and any related transactions and takes any action necessary to enforce the rights of the Fund in connection with such transactions;

(4) Reviews the Independent Appraisal Report, confirms that the underlying methodology is reasonable and accurate, and confirms that the valuation of the Property was reasonably derived;

(5) Ensures that the Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Purchase;

(6) Determines in writing whether it is prudent for the Fund to proceed with the Purchase, based on the most current information and assumptions;

(7) Prepares a final report certifying that every condition in the exemption has been met with a description of any steps taken or information verified in order to make such certifications. The report will be delivered to the Department at e-OED@dol.gov within 60 days of the date of closing of the Purchase.

(8) Has not entered into and must not enter into any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Fund or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Fiduciary's work; or waives any rights, claims, or remedies of the Fund under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption; and

(9) Must not enter into any agreement or instrument in connection with its appointment as Independent Fiduciary that violates section 410 of ERISA or section 2509.75-4 of the Department's regulations;

(h) The Fund's Board of Trustees and the Independent Fiduciary maintain for

a period of six (6) years from the date of the Purchase, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (i)(1) below to determine whether conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Fund's Board of Trustees and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Fund's Board of Trustees or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (i) below; and

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (h) above shall be unconditionally available at their customary location during normal business hours to:

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) the Fund's Board of Trustees or any duly authorized representative of the Fund's Board of Trustees;

(iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(iv) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) Should any party refuse to disclose information to a person on the basis that such information is exempt from disclosure; such party shall by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information;

(j) The Union, the Fund's Board of Trustees, and/or the Independent Fiduciary must provide to the Department the records necessary to demonstrate that the conditions of this exemption, as amended, have been met, within 30 days from the date the Department requests such records; and

(k) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times.

Exemption Date: The exemption will be in effect as of the date the final exemption is published in the **Federal Register**.

Signed at Washington, DC, this 1st day of June 2026.

Christopher Motta,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2026-11134 Filed 6-2-26; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-12097]

Proposed Exemption Involving the Abiomed Retirement Savings Plan Located in Danvers, MA

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides a notice of proposed exemption that, if granted, would permit the Abiomed Retirement Savings Plan (the Plan) to acquire and hold certain "contingent value rights" (CVRs) and to receive certain payments in connection therewith. Absent an exemption, these transactions would violate the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code).

DATES:

Exemption date: If granted, the exemption will be in effect as of November 15, 2022.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by July 20, 2026.

ADDRESSES: All written comments and requests for a hearing must be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-12097:

- via email to e-OED@dol.gov; or
- Electronically at <https://www.regulations.gov>. Follow the "Submit a Comment" instructions.

Any comments or requests must be received by the end of the scheduled comment period. The application and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210, reachable by telephone at 1-866-444-3272. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT:

Blessed ChukSORJI-Keefe of the Department at (202) 693-8540. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption if their request includes: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of their interest in the exemption and the manner in which they would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a hearing request made in accordance with the requirements above when it finds that a hearing is necessary to fully explore material factual issues identified by the requestor and the Department will publish a hearing notice in the **Federal Register**. The Department may decline to hold a hearing if it finds that: (1) the request for the hearing does not meet the requirements stated above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified in the request can be fully explored through the submission of evidence in written (including electronic) form.

Warning: The Department will include all comments received in the public record without change and will make them available online at <https://www.regulations.gov>. The Department notes that it will include any personal information provided in the public record and online, unless the commenter claims that any of the information included is confidential or the disclosure of such information is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential or otherwise protected (such as a Social Security number or an unlisted phone number) and confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide them in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

The Department is proposing this exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the Department’s exemption procedures regulation.¹ If granted, the exemption would not provide relief from any violation of law not expressly identified herein, including, but not limited to, ERISA section 404.

Benefits of the Exemption: The Department is proposing this exemption based, in part, on the Applicant’s representations that the exemption will allow the Plan to acquire and hold the CVRs, and receive payments in connection therewith, on essentially the same terms as other holders of the CVRs.

Summary of Facts and Representations²

The Plan

1. The Abiomed Retirement Savings Plan (the Applicant or the Plan) is a defined contribution plan covering employees of Abiomed, Inc. (Abiomed). As of November 15, 2022 (the effective date of this exemption, if granted), the Plan had \$154,574,378.85 in assets, including 73,816 shares of Abiomed

common stock, which had a fair market value of \$29,040,462.55.

The Transactions

2. On November 1, 2022, Johnson & Johnson, Inc. (J&J) announced a tender offer (the Tender Offer) to purchase each share of Abiomed common stock for \$380.00 (the Offer Price), net to the seller, in cash, without interest, plus one non-tradeable CVR. The CVR provides each holder the right to receive contingent payments totaling up to \$35.00 per share of Abiomed common stock, without interest and less any required withholding taxes, upon the achievement of specified milestones. Shareholders of Abiomed common stock who didn’t tender their stock were due the same proceeds.

The Plan’s Participation in the Tender Offer

3. The Tender Offer opened on November 15, 2022, and participants had until December 21, 2022, to sell their shares.

4. **Tendering Participants.** In total, 43 participants tendered 7,289,356 shares of Abiomed stock in exchange for \$4,896,218.55 in cash and 7,289,356 CVRs. The cash was credited to participants’ accounts on December 28, 2022, and the CVRs were received by the Plan on December 29, 2022. The CVRs are held in a Plan-level account with participant level recordkeeping, subject to the terms of each CVR.

5. **Non-tendering participants.** In total, 263 non-tendering Plan participants received \$23,549,664.73 cash and 35,060,022 CVRs. The cash was credited to participants’ Plan accounts on December 29, 2022, and invested in the applicable BlackRock LifePath® Index Class S Fund based on the participant’s date of birth. The CVRs were deposited in a Plan-level account with participant level recordkeeping, subject to the terms of each CVR.

Merits of the Exemption

6. This exemption allows the Plan to acquire and hold the CVRs, and receive payments in connection therewith, on essentially the same terms as other Abiomed shareholders/CVR holders, including several large, institutional investors. Without the ability to acquire, hold, and dispose of the CVRs, the Plan would receive less consideration for its shares of Abiomed common stock than other similarly situated Abiomed shareholders. The Plan did not pay any fees or commissions in connection with the acquisition or holding of the CVRs, nor will the Plan or its participants pay any fees or commissions in connection with the receipt of payments from the

CVRs. The Plan’s holding of the CVRs, and its receipt of cash payments in connection therewith, have been and will be in accordance with the provisions of the CVRs that are applicable to all other holders of the CVRs, with no discretion by the Committee.

7. According to the Applicant, the CVRs’ governing instrument, the Contingent Value Rights Agreement, dated December 22, 2022, contained as an Exhibit to the Merger Agreement, was structured to ensure that CVR holders will be able to determine whether the CVR milestones have been met. If J&J provides notice that any of the CVR milestones have not been met or fails to pay the Plan amounts owed in respect of the CVRs, then J&J will cause an audit to be performed by an independent certified public accounting firm for the purpose of verifying whether the net sales milestones have been met. The results of the audit will be part of the record given to the Plan sponsor for the Plan sponsor to review and maintain under the recordkeeping provision of this exemption. If J&J fails to make a payment that a publicly available audit determines has become due under the terms of the CVRs, the relief under this exemption will cease as of the date the payment was due.

No Independent Fiduciary

8. The Committee did not engage a qualified independent fiduciary (QIF) to represent the Plan in connection with the transactions described in this proposed exemption. In this regard, the Committee determined that, because the decision to participate in or not participate in the Tender Offer was passed through to Plan participants in accordance with the terms of the Plan document, a QIF would have no fiduciary role and was not required.

ERISA Analysis

9. ERISA section 404 imposes the duties of prudence and loyalty on fiduciaries. This proposed exemption requires that the Committee acted prudently and loyally in accordance with ERISA section 404, with respect to the transactions described in this proposed exemption, including with respect to the Committee’s decision to allow participants to decide whether or not to participate in the Tender Offer.

10. ERISA section 406(a)(1)(A) provides, in relevant part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he or she knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a

¹ 29 CFR part 2570, subpart B (76 FR 66644 (October 27, 2011)). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department is proposing this exemption under its sole authority. Any references hereinafter to sections of ERISA shall be deemed to refer to the corresponding sections of the Code, unless indicated otherwise.

² The Summary of Facts and Representations is based on the Plan’s representations in its exemption application and does not reflect factual findings or the Department’s opinion, unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations made by the Plan in Application D-12097 are true, complete, and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption may cease to be effective, with such determination made at Department’s sole discretion. See 29 CFR 5570.49.

plan and a party in interest. The term “party in interest” is defined under ERISA Section 3(14)(C) to include an employer. J&J is the employer of employees in the Plan and is therefore a party in interest.

11. The payout of cash upon the attainment of a CVR milestone may be considered a sale or exchange transaction between the Plan and J&J under ERISA section 406(a)(1)(A), because the payment of cash by J&J would satisfy the Plan’s right to receive payments from a party in interest.

12. ERISA section 407(a)(1)(A) provides that a plan may not acquire or hold any “employer security” which is not a “qualifying employer security.” Under ERISA section 407(d)(1), “employer securities” are defined, in relevant part, as securities issued by an employer of employees covered by the plan, or by an affiliate of the employer. ERISA section 407(d)(5) provides, in relevant part, that “qualifying employer securities” are stocks or marketable obligations. The Plan represents that the CVRs are non-qualifying employer securities as they are not stock, marketable obligations, or interests in a publicly traded partnership. As a result, the Plan’s acquisition and holding of the CVRs violates ERISA section 407(a).

13. Further, ERISA section 406(a)(2) prohibits a plan fiduciary from permitting a plan to hold any employer security if he or she knows or should know that holding the security violates ERISA section 407(a). Because the CVRs are non-qualifying employer securities, the Plan’s current and continued holding of the CVRs violates ERISA section 406(a)(2).

14. ERISA section 406(a)(1)(E) prohibits a plan fiduciary from causing the plan to engage in a transaction if he or she knows or should know that the transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of ERISA section 407(a). As outlined above, the acquisition and holding of the CVRs violates ERISA section 407(a). Therefore, the acquisition of the CVRs violated ERISA section 406(a)(1)(E).³

³ ERISA section 406(b)(1) prohibits a plan fiduciary from dealing with the assets of a plan in his or her own interest and ERISA section 406(b)(2) prohibits a plan fiduciary from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan. The Applicant states that, because participant action or the consequence of the merger of Abiomed into a subsidiary of J&J under corporate law caused or will cause the Plan to acquire, hold, and dispose of the CVRs rather than an action by the Committee or other Plan fiduciary, ERISA section 406(b) should not have been violated. The Department is not taking a view whether a violation of ERISA section 406(b) has occurred, as such determination

Statutory Findings

The Department has made the following required findings under ERISA section 408(a) and Code section 4975(c)(2) with respect to the proposed exemption.

15. “Administratively Feasible.” The Department has tentatively determined that the proposed exemption is administratively feasible for the Department because, among other things, the Plan participants received the CVRs pursuant to J&J’s independent corporate act and the exemption requires the Plan to maintain all records necessary to demonstrate the conditions have been satisfied and provide these documents to the Department within 30 days of the Department’s request.

16. “In the interest of the Plan.” The Department has tentatively determined that the proposed exemption is in the interest of the Plan and its participants and beneficiaries because, among other things, it would allow the Plan to receive the same consideration as all other holders of Abiomed common stock and the CVRs.

17. “Protective of the Plan.” The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan’s participants and beneficiaries because, among other things, the Plan and its participants and beneficiaries retained the same rights as all other independent third-party holders of Abiomed stock and the CVRs. Additionally, the Plan did not pay any fees or commission in connection with the acquisition or holding of the CVRs.

Notice to Interested Persons

Interested persons include participants and beneficiaries of the Plan. The Plan will provide notification to interested persons by first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will contain a copy of the Notice, as it appears in the **Federal Register**, plus a copy of the supplemental statement that is required pursuant to 29 CFR 2570.43(a)(2), which advises interested persons of their right to comment and to request a hearing.

The Department will not consider comments or requests for a hearing received by the Department after forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

Comments will be made available to the public.

is necessarily a facts and circumstances-based inquiry that is outside the scope of this exemption.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments become part of the disclosable administrative record. Further, comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan and its participants and beneficiaries and in a prudent manner in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, would be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption, if granted, would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the Department's exemption procedures regulation.⁴ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested by the Plan to the Secretary of Labor.

Section I. Transactions

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2) and 407(a)(1)(A), and the excise tax imposed by Code section 4975(a) and (b) will not apply, effective November 15, 2022, to: (1) the Plan's acquisition and holding of "contingent value rights" (CVRs)⁵ following the tender of Abiomed common stock or the cancellation of Abiomed common stock; and (2) the Plan's receipt of payments in connection the transactions described in (1). To receive this relief, the conditions in Section II must be met.

Section II. Conditions

(a) The Plan's acquisition of the CVRs resulted solely from an independent corporate act of Johnson & Johnson, Inc. (J&J), without participation on the part of any Plan fiduciary, in accordance with the terms of the Agreement and Plan of Merger⁶ between J&J and Abiomed, dated November 15, 2022.

(b) The Plan's acquisition of CVRs was on essentially the same terms and in the same manner as the acquisition of CVRs by all other similarly situated shareholders of Abiomed common stock.

(c) Plan participants' acquisitions of the CVRs were consistent with the terms of the Plan.

(d) A Plan participant's decision whether or not to tender their shares had no impact on the amount of cash or the number of CVRs that they received.

(e) The Committee acted prudently and loyally in accordance with ERISA section 404, with respect to the transactions described in this proposed exemption, including with respect to the Committee's decision to allow participants to decide whether or not to participate in the Tender Offer.

(f) The Plan did not pay any fees or commissions in connection with its acquisition and holding of the CVRs, and its receipt of cash payments in connection therewith.

(g) Plan participants have the same rights with respect to the CVRs allocated to their accounts under the Plan as unrelated CVR holders have with respect to CVRs not held under the Plan.

(h) Plan participants receive payment of all amounts due under the terms of the CVRs. (i) The terms of the Plan's acquisition and holding of the CVRs, and the Plan's receipt of cash payments in connection therewith, will be the same as the terms applicable to all other holders of CVRs.

(j) In the event that J&J or Abiomed provides notice, or takes the position, that any CVR milestones have not been met, and/or fails to pay the Plan any amounts due under the terms of the CVRs, then J&J and/or Abiomed will submit to an audit, the cost of which will borne by J&J, to be performed by an independent certified public accounting firm for the purpose of verifying whether the relevant CVR milestones have been met, and the results of the audit will be provided to the Plan sponsor to review and maintain.

(k) The Plan maintains for a period of six (6) years from the date of publication of the exemption in the **Federal Register**, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (l)(1) below to determine whether conditions of this exemption, if granted, have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Abiomed, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Abiomed shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (l) below.

(l)(1) Except as provided in Section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (i) above shall be unconditionally available at their customary location during normal business hours to:

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Abiomed or any duly authorized representative of Abiomed;

(C) a Plan fiduciary or any duly authorized representative of a Plan fiduciary;

(D) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) No person described in paragraph (l)(1)(B)-(D) is authorized to examine financial information which is privileged or confidential, and should the Applicant refuse to disclose information on the basis that such information is exempt from disclosure, the Applicant must, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(m) The Plan provides the Department with the records necessary to demonstrate that the conditions of this exemption, if granted, have been met, within 30 days from the date the Department requests such records.

(n) All of the material facts and representations made by the Applicant that are set forth in the Summary of Facts and Representations are true and accurate at all times.

Exemption date: If granted, the exemption will be in effect as of November 15, 2022.

Signed at Washington, DC, this 27th day of May 2026.

Christopher Motta,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2026-11063 Filed 6-2-26; 8:45 am]

BILLING CODE 4510-29-P

⁴ 29 CFR part 2570, subpart B (89 FR 4662 (January 24, 2024)). For purposes of this proposed exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

⁵ The right to receive contingent payments of up to \$35.00 per share of Abiomed common stock in cash, without interest and less any required withholding taxes, in the aggregate, upon the achievement of specified milestones, and upon the terms and subject to the conditions set forth in the Contingent Value Rights Agreement.

⁶ The Merger Agreement dated November 15, 2022, that contemplated the acquisition of Abiomed by merging it into a wholly owned subsidiary of J&J. The Merger Agreement required the tender of a majority of the outstanding shares of Abiomed's common stock, as well as the receipt of applicable regulatory approvals and other customary closing conditions. A total of 38,961,427 shares of Abiomed common stock were tendered or 86.4% of the outstanding Abiomed shares of common stock.

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2024-1]

Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of continuing designation.

SUMMARY: The U.S. Copyright Office, as required by the Music Modernization Act, has completed its first periodic review of the existing designations of the mechanical licensing collective and digital licensee coordinator and has determined that both designations should be continued.

DATES: Effective June 3, 2026.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at USCGeneralCounsel@copyright.gov or telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION:

I. Introduction

Prior to the passage of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”) in 2018, there was “a widespread perception that our [music] licensing system [was] broken,”¹ especially as “music copyright and licensing laws [were] too difficult to comply with and [did] not adequately reward the artists and professionals responsible for creating American music.”² The cornerstone of the MMA’s reforms was the creation of the new section 115 statutory blanket license. To administer this license, the MMA provided for the establishment of a “mechanical licensing collective,” a new entity that could centralize the collection and distribution of blanket license royalties and establish and maintain a publicly accessible database of musical works, their owners, and the sound recordings in which the musical works are embodied.³

The MMA directs the Register of Copyrights (“Register”) to designate an entity as the “mechanical licensing collective”; it also allows, but does not require, the Register to designate a “digital licensee coordinator” to coordinate the activities of digital music providers (“DMPs”).⁴ The Register is

required to revisit these designations every five years. In July 2019, the Register made her initial designations; designating the entity “Mechanical Licensing Collective” (“MLC”) as the statutory mechanical licensing collective and the entity “Digital Licensee Coordinator, Inc.” (“DLC”) as the statutory digital licensee coordinator.⁵

Despite general optimism that the MMA’s reforms would improve the section 115 license, some made the point that “once the bill is signed the real hard work begins,” especially as “build[ing] an industry-wide, comprehensive public database that will match compositions to recordings [would be] an ambitious undertaking that has yet to be successfully completed in past industry attempts.”⁶ From its initial designation until it began operations, the MLC had the formidable task of ensuring that it had all administrative and technological capabilities in place to open for business on the statutory “license availability date” of January 1, 2021. This included establishing a governance structure, including bylaws, Board membership, committee membership, policies, procedures, practices, and guidelines, and building out technological services, including establishing a musical works database, claiming portal, and payment and other financial processes. It also had to hire staff, construct physical space, engage in outreach and education, and invest in vendors, to fulfill its statutory duties.⁷ The MLC completed all these tasks and made its first royalty distribution, on time, in April 2021.

In January 2024, the Copyright Office initiated the first five-year review of the MLC’s and DLC’s designations. The Office issued a Notification of Inquiry (“NOI”) seeking public comment on whether the existing designations should be continued, subject to certain

statutory criteria.⁸ The goal is to evaluate the efforts the MLC and DLC have made to realize Congress’s vision of improved efficiency, transparency, and fair administration of the section 115 statutory blanket license.

As discussed in detail below, the Register has determined that the current designations for the entities operating as the digital licensee coordinator and mechanical licensing collective should be continued. Overall, the administration of the MMA’s blanket mechanical license has been a great success for publishers, songwriters, and DMPs. The MLC has compiled ownership data for more than 53 million works, increased its membership to over 80,000 copyright owners,⁹ and improved the ratio of total royalties matched to royalties reported to approximately 92%.¹⁰ It has also implemented many of the Office’s recommendations of best practices to effectively identify and locate copyright owners with unclaimed royalties of musical works, encourage copyright owners to claim accrued royalties, and ultimately reduce the incidence of unclaimed royalties.¹¹ One of the MLC’s most important success metrics is its distribution of approximately \$3.9 billion in royalties, constituting a reliable and significant income source for songwriters and publishers.

While most commenters expressed satisfaction with the MLC and DLC, some suggested ways that the designees could improve their respective services. In some cases, these comments reflected non-pervasive or nascent areas of concern. In others, they offered immediate opportunities for improvement. The Office appreciates the opportunity to work with both designees to appropriately address the suggestions and concerns. While the MLC and DLC have executed their statutory duties well over the first five-year period, this redesignation process provides an important opportunity for a comprehensive review. The Office has considered commenters’ concerns and suggested several areas of improvement to ensure the continuance of the designees’ successes and assist them as they build upon them.

¹ U.S. Copyright Office, *Copyright and the Music Marketplace* 1 (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

² Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018) (“Conf. Rep.”), https://www.copyright.gov/legislation/mma_conference_report.pdf.

³ A “musical work” is “a song’s underlying composition along with any accompanying lyrics” and a “sound recording” is “a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file, called a ‘phonorecord.’” *What Musicians Should Know about Copyright*, U.S. Copyright Office, <https://www.copyright.gov/engage/musicians/> (last visited May 26, 2026); 17 U.S.C. 101.

⁴ 17 U.S.C. 115(d)(5)(B); see also *id.* at 115(d)(3)(D)(i)(IV), (d)(5)(C). Under the MMA,

DMPs bear the reasonable costs of establishing and operating the collective through an “administrative assessment,” determined by the Copyright Royalty Judges (“CRJs”). See *id.* at 115(d)(7).

⁵ 84 FR 32274, 32292, 32296 (July 8, 2019) (“Initial Designation”); see also 37 CFR 210.23 (discussing the designation of the MLC and DLC). In this notice, the currently designated digital licensing coordinator will be designated as the “Digital Licensing Coordinator” or “DLC” and the statutory digital licensing coordinator will be designated in lowercase. Similarly, the currently designated mechanical licensing collective will be designated as the “Mechanical Licensing Collective” or “MLC” and the statutory mechanical licensing collective will be designated in lowercase.

⁶ Ed Christman, *President Trump Signs Music Modernization Act Into Law With Kid Rock, Sam Moore As Witnesses*, *Billboard* (Oct. 11, 2018), <https://www.billboard.com/pro/president-trump-signs-music-modernization-act-law-bill-signing/>.

⁷ 17 U.S.C. 115(d)(3)(C).

⁸ 89 FR 5940 (Jan. 30, 2024) (“NOI”).

⁹ *The MLC Quarter Note: Q1 2026*, MLC, <https://emails.themlc.com/the-mlc-quarter-note-q1-2026> (last visited May 26, 2026).

¹⁰ *Blanket Royalties*, MLC, <https://www.themlc.com/blanket-royalties> (last visited May 26, 2026).

¹¹ See U.S. Copyright Office, *Unclaimed Royalties: Best Practice Recommendations for the Mechanical Licensing Collective* (2021) (“Unclaimed Royalties Report”), <https://www.copyright.gov/policy/unclaimed-royalties/unclaimed-royalties-final-report.pdf>.

Finally, some commenters objected to certain provisions of the MMA itself or its implementing regulations. Generally, those topics are outside this proceeding's scope and will not be addressed here. While the Office has adopted numerous regulations to implement the MMA, we retain regulatory authority to administer many of its provisions and will consider any potential regulatory changes separately from this proceeding.

II. Statutory and Regulatory Background

A. Statutory Background

Title I of the MMA¹² created a statutory blanket mechanical license for the reproduction and distribution of nondramatic musical works by DMPs in the form of digital phonorecord deliveries, including permanent downloads, limited downloads, and interactive streams (referred to in the statute as “covered activity” where such activity qualifies for the blanket license), and eliminated the song-by-song “notice of intention” process for such uses.

The MLC and DLC play important roles in the administration of this license. To evaluate whether either's designation should be continued, the Office considered each entity's separate statutory designation criteria, authority, and functions.

1. The MLC's Designation Criteria, Authorities, and Functions

The entity designated as the MLC must be: (i) a single nonprofit entity that is created by copyright owners to carry out its statutory responsibilities that is (ii) “endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years,”¹³ (iii) able to demonstrate to the Copyright Office that it has the administrative and technological capabilities to perform the required functions, and governed by a board of directors (“Board”) which includes a mix of voting and nonvoting members as directed by the statute.¹⁴

The MMA enumerates several required functions for the MLC.¹⁵ Among other duties, its core functions include administering the blanket statutory mechanical license,

identifying musical works and copyright owners, matching those works to sound recordings (and addressing disputes), and ensuring that copyright owners are paid correctly. To that end, the MMA requires the MLC to maintain a free, public database of musical work and sound recording ownership information and administer processes by which copyright owners can claim ownership of musical works (and shares of such works).¹⁶ The MLC also participates in proceedings before the Copyright Royalty Judges (“CRJs”) to establish the administrative assessment that funds its activities and in proceedings before the Copyright Office with respect to activities related to the statutory license.¹⁷

By statute, the MLC's Board consists of fourteen voting members and three nonvoting members. Ten voting members must be representatives of music publishers that have been assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities, and four others must be professional songwriters who have retained and exercise exclusive rights of reproduction and distribution for musical works they have authored. There are also three nonvoting members that represent the interests of songwriters, music publishers, and digital licensees via representatives of relevant trade associations or, in the case of licensees, the DLC.¹⁸

In addition, the Board must maintain three committees: an Operations Advisory Committee, an Unclaimed Royalties Oversight Committee, and a Dispute Resolution Committee. The Operations Advisory Committee makes recommendations concerning the operations of the collective, “including the efficient investment in and deployment of information technology and data resources.”¹⁹ The Unclaimed Royalties Oversight Committee establishes policies and procedures necessary to undertake a fair distribution of unclaimed royalties.²⁰ The Dispute Resolution Committee establishes policies and procedures to address disputes relating to ownership interests in musical works, including a

mechanism to hold disputed funds pending the resolution of the dispute.²¹

2. The DLC's Designation Criteria, Authorities, and Functions

The DLC must be a single nonprofit entity created to carry out certain statutory responsibilities, endorsed by DMPs and significant nonblanket licensees (or “SNBLs”) that together represent the greatest percentage of the licensee market for uses of musical works in covered activities (as measured over the preceding three years), and possess the administrative capabilities to carry out its functions.²² Those statutory functions include: establishing a governance structure, criteria for membership, and membership dues; enforcing notice and payment obligations for the administrative assessment; participating in certain proceedings before the Copyright Office or CRJs; and assisting in publicizing the MLC's existence and the ability of copyright owners to claim royalties with the MLC.²³

B. Regulatory Background

1. Initial Designation

In 2018, the Office published a notice in the **Federal Register** soliciting proposals from parties who wished to be designated as the mechanical licensing collective and digital licensee coordinator, and requesting information pertaining to the criterion set forth above.²⁴ The Office also requested public comments on the parties' proposals.

The Office received one proposal for designation as the digital licensee coordinator and two proposals for designation as the mechanical licensing collective. After reviewing the proposals along with the statutory designation criteria, considering over 600 public comments, and hosting *ex parte* meetings with interested parties,²⁵ we concluded that the entity “Digital Licensee Coordinator, Inc.,” incorporated in Delaware on March 20, 2019, “me[t] each of the statutory criteria required of the digital licensee coordinator,” and would be designated

²¹ *Id.* at 115(d)(3)(D)(vi), (d)(3)(H)(ii), (d)(3)(K). By statute, this committee consists of at least six members, again equally divided among musical work copyright owners and professional songwriters.

²² *Id.* at 115(d)(5)(A)(i)–(iii).

²³ *Id.* at 115(d)(5)(C)(i).

²⁴ 83 FR 65747 (Dec. 21, 2018).

²⁵ *Ex Parte Communications*, U.S. Copyright Office, <https://www.copyright.gov/rulemaking/mma-designations/ex-parte-communications.html> (last visited May 26, 2026) (hosting *ex parte* meeting summary letters related to the Office's initial designations).

¹² Public Law 115–264, 132 Stat. 3676 (2018).

¹³ 17 U.S.C. 115(d)(3)(A)(ii).

¹⁴ *Id.* at 115(d)(3)(A), (d)(3)(D)(i).

¹⁵ *Id.* at 115(d)(3)(C)(i), (iii) (enumerating thirteen functions, in addition to permission to administer voluntary licenses).

¹⁶ *Id.* at 115(d)(3)(E).

¹⁷ *Id.* at 115(d)(3)(C)(i)(IX)–(X).

¹⁸ *Id.* at 115(d)(3)(D)(i).

¹⁹ *Id.* at 115(d)(3)(D)(iv). By statute, this committee has an equal number of musical work copyright owners and DMP representatives, respectively appointed by the MLC and DLC.

²⁰ *Id.* at 115(d)(3)(D)(v), (d)(3)(J)(ii). By statute, this committee of ten has an equal number of musical work copyright owners and professional songwriters.

as the DLC.²⁶ With respect to the mechanical licensing collective, we concluded that, while both candidates “[met] the statutory criteria,” the MLC “made a better showing as to its prospective administrative and technological capabilities” and was the only candidate that met the statute’s “endorsement” criterion.²⁷ Therefore, the Register designated the entity “Mechanical Licensing Collective, Inc.,” incorporated in Delaware on March 5, 2019, as the mechanical licensing collective.²⁸

2. First Periodic Review

On January 30, 2024, the Office issued an NOI regarding the periodic review of the designations.²⁹ The currently designated mechanical licensing collective and digital licensee coordinator provided information regarding their past performance and capabilities, as well as future plans, in support of their requests that their current designations should be continued. The public was invited to comment on these submissions and the Office received over 60 comments. We also provided the currently designated entities an opportunity to submit replies in response to the comments, and held *ex parte* meetings with the MLC, DLC, and members of the public to address issues that had been raised.³⁰

The NOI also explained that once the Office evaluated the record in this proceeding, the Register would “determine whether the current MLC and DLC designations should be continued,” and if she concluded that either designation should be continued, she would publish that determination in the **Federal Register**.³¹

III. Evaluation of the Mechanical Licensing Collective

The MMA tasked the mechanical licensing collective with significant responsibility in administering a complex and novel licensing system. In the seven years since its designation, the MLC has worked diligently to develop one of the largest databases of musical work ownership in the world, improve matching rates and quality, and educate the music community regarding the MMA. In response to the NOI, most commenters endorsed the MLC’s continued designation, though some offered critiques or made suggestions for improvement in particular areas. While the Office has considered and addressed these comments in the sections below, they do not affect our conclusion that the MLC has been a success. We find that it has met the statutory qualifications and possesses the administrative and technological capabilities to perform the required functions to continue its designation as the mechanical licensing collective.

A. Nonprofit Status

The MLC provided a “Statement of Good Standing” from the Delaware Division of Corporations to demonstrate that it is a “a single entity that is a nonprofit entity, not owned by any other entity, that is created by copyright owners to carry out responsibilities” under the MMA.³² No comments raised any issue about the MLC’s nonprofit status. Accordingly, the MLC has satisfied the first statutory criterion for designation.

B. Indicia of Endorsement and Support

As proof that it satisfies the second criterion for designation, the MLC collected 1,129 endorsements from its current members, and provided compiled market share data for covered activities over the past 3 years for those endorsers.³³ The MLC confirmed that the endorsing members represent a clear majority of the market over the past three years, as measured by their licensing revenue from covered activities during this period.³⁴ The MLC also provided *Music & Copyright’s* annual survey showing that endorsing members Sony Music Entertainment, Universal Music Publishing Group, and Warner Chappell Music together had an average combined global market share of

69.2% for 2024.³⁵ The MLC noted that copyright owners have shown their substantial support over the past three years through their willingness to contribute their time and expertise as unpaid representatives on the MLC’s Board and various committees, and their involvement in campaigns to build industry partnerships and improve the MLC’s tools and resources.³⁶ No submitted comments contested the MLC’s satisfaction of the endorsement criterion.

As the MLC has established that it is “endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years,”³⁷ it satisfies the second statutory criterion for designation.

C. Administrative and Technological Capabilities

The third criterion for designation involves evaluating the MLC’s administrative and technological capabilities to perform its statutory functions, including its governance structure. The Office’s NOI requested a detailed description of the MLC’s administrative and technological capabilities as well as other aspects of its operations. We also requested an update on the MLC’s efforts to implement recommendations contained in the Office’s *Unclaimed Royalties Report*, including which ones have been implemented to date, what efforts are in progress, any plans to implement recommendations in the future, and any recommendations it is not planning to implement.³⁸

1. Musical Works Database, Registering Works and Shares, and the Claiming Portal

The statute requires the MLC to create and maintain a free online database to publicly disclose information about musical works, their owners, and the sound recordings in which they are embodied.³⁹ The database must include the following musical work information: the MLC’s standard identifier; the work’s title and any alternative or parenthetical titles; the international

²⁶ Initial Designation at 32292, 32296; 37 CFR 210.23.

²⁷ Initial Designation at 32276, 32296.

²⁸ 37 CFR 210.23; Initial Designation at 32296.

²⁹ NOI.

³⁰ All activity, including public submissions and comments, can be accessed via navigation from <https://www.copyright.gov/rulemaking/mma-designations/2024/>. Records of *ex parte* communications, including those referenced herein, along with guidelines for such communications, are available at <https://www.copyright.gov/rulemaking/mma-designations/2024/ex-parte-communications.html>. References to the public comments are by party name (abbreviated where appropriate), followed by “Submission,” “Reply Submission,” “Initial Comments,” “Reply Comments,” or “Ex Parte Letter,” as appropriate.

³¹ NOI at 5942. The NOI noted that if either designation would not be continued, the Office explained that it intended to solicit proposals for a new MLC or DLC designation in the **Federal Register**. *Id.* As both designations are being continued, soliciting proposals for new designees is unnecessary.

³² 17 U.S.C. 115(d)(3)(A)(i); see MLC Initial Submission Ex. 1, at 1.

³³ MLC Initial Submission at 7 and Ex. 2, at 1–28.

³⁴ *Id.*

³⁵ MLC *Ex Parte* Letter at 7–8 (July 21, 2025) (citing *Market share results reveal the 2024 recorded-music and music publishing winners and losers*, Music & Copyright (Apr. 23, 2025), <https://musicandcopyright.wordpress.com/category/market-share-2/>).

³⁶ MLC Initial Submission at 8.

³⁷ 17 U.S.C. 115(d)(3)(A)(ii).

³⁸ NOI at 5942.

³⁹ 17 U.S.C. 115(d)(3)(E), (e)(20).

standard musical work code (“ISWC”); the name(s) of the copyright owner(s) and songwriter(s); International Standard Name Identifiers (“ISNIs”) and Interested Parties Information (“IPIs”) for each musical work copyright owner, and, if different, songwriter, and administrator.⁴⁰ The database must also include the following sound recording information: the recording title; the international standard recording code (“ISRC”); and any unique identifier(s) assigned by a blanket licensee.⁴¹

The statute also requires the MLC to create and maintain an “online facility” (what the MLC and stakeholders refer to as its “claiming portal”) listing “unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work).”⁴²

The Office’s NOI requested information about how the MLC is fulfilling its statutory and regulatory requirements with respect to its maintenance of the musical works database. We also requested an update on the MLC’s efforts to implement recommendations related to the database’s usability contained in the *Unclaimed Royalties Report*.⁴³ These recommendations included establishing “flexible and robust searching, sorting, and filtering features,”⁴⁴ efficient song registration processes that include bulk mechanisms,⁴⁵ portal access to represented songwriters,⁴⁶ and quality assurance mechanisms to review, verify, and quality-check data reported to the database.⁴⁷

The MLC confirmed that it continues to satisfy the statutory requirements, asserting that it “maintains one of the largest databases of musical work ownership information in the world, with data for more than 35.5 million musical works.”⁴⁸ According to the MLC, the database features identifying information for each registered musical work including the work’s title, the owner(s) of the work, the percentage ownership shares claimed by each

owner, owner contact information, the MLC’s standard identifier, or song code, assigned to each work, the musical work’s ISWC (if provided by rightsholders), and “information for any associated sound recording uses The MLC has matched to the work.”⁴⁹ The MLC also stated that it has built “novel” tools and features for users to “(1) enhance their individual user experience (e.g., structured search fields and filters) and (2) support the needs of high-volume and power-user Members (e.g., on-demand bulk data export and submission tools).”⁵⁰

Some commenters praised the database as “a definitive source [that] allows . . . members (publishers, songwriters and administrators) to easily and efficiently manage their works.”⁵¹ For example, one called the database “one of the most complete repositories of musical work metadata that is available to the public.”⁵² Others offered specific critiques regarding the database’s tools and resources, songwriter access, and data quality.⁵³

a. Tools and Resources

In the NOI, the Office asked the MLC to describe any efforts it has undertaken to enhance database and claiming portal functionality, including with respect to searching the database, sorting and filtering queries, and sharing and exporting results, as well as specific plans to develop additional functionality over the next five years. We also asked whether the MLC had any plans to address disputes and situations where multiple claimants have claimed shares totaling over 100% on a musical work via a module within its portal.⁵⁴ In response, the MLC highlighted several enhanced functionalities in tools available to its members and the public.

i. Member tools

Among the tools available to the MLC’s members, the MLC highlighted (1) its Member Portal, which allows members to “register, edit and review their musical works data, create and submit registrations for any new musical works, manage and update their contact information, banking details and

tax forms, and associate one or more authorized users with their MLC Member accounts”;⁵⁵ (2) its Claiming Tool, which allows members to search for unclaimed shares of works and claim the shares they administer; (3) various work registration tools, which provide for individual registrations, bulk registrations, and registration via Common Works Registration (“CWR”) format; (4) its Matching Tool, which allows members to search data derived from monthly usage reports about recordings the MLC has been unable to match to registered musical works, and propose matches; (5) its Catalog Export Tool, which allows members to download all, or a portion of, their musical works data registered with the MLC;⁵⁶ and (6) its Overclaims Tool, which allows members to resolve overclaims and disputes regarding newly registered works for which the total shares claimed by all members amount to over 100%.⁵⁷

ii. Public tools

The MLC identified the following publicly available tools and resources that aid in matching. Its Public Work Search is a search tool that “allows anyone to retrieve ownership information for every musical work contained in [t]he MLC’s database.”⁵⁸ According to the MLC, “search results show ownership data for each rightsholder that has claimed a share of the work concerned, the total percentage of shares of the work that each owner has claimed, the represented songwriters (where rightsholders have provided it), and the sound recording products that [t]he MLC has matched to each musical work.”⁵⁹ This tool enables searching by work title, songwriter, and publisher, and also “allows users to filter results by additional criteria, including ISWC, MLC Song Code, writer IPI, and Publisher IPI.”⁶⁰

Its Public Search API is an additional search tool that “allows any member of the public to retrieve information about musical works in [t]he MLC database” through the use of an application program interface (“API”).⁶¹

Its Missing Member Lookup resource is a public, searchable database containing the names of rightsholders

⁴⁰ *Id.* at 115(d)(3)(E)(ii)–(iii); 37 CFR 210.31(b)(1), (c)(1).

⁴¹ 17 U.S.C. 115(d)(3)(E)(ii)–(iii); 37 CFR 210.31(b)(2), (c)(2).

⁴² 17 U.S.C. 115(d)(3)(F)(iii)(I) (requiring the MLC to “maintain a publicly accessible online facility with contact information for the collective that lists unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work)”).

⁴³ NOI at 5942.

⁴⁴ *Unclaimed Royalties Report* at 42.

⁴⁵ *Id.* at 48.

⁴⁶ *Id.* at 52–54.

⁴⁷ *Id.* at 60–62.

⁴⁸ MLC Initial Submission at 12.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Big Machine Music Initial Comments at 1; NSAI Initial Comments at 2 (describing the database as clear, concise, and easily navigable).

⁵² Reservoir Initial Comments at 1 (describing the database as “one of the most complete repositories of musical work metadata that is available to the public”).

⁵³ Abby North Initial Comments at 2, 5; A2IM Initial Comments at 2; BMAC & MAC Reply Comments at 3; CleaRights Initial Comments at 2.

⁵⁴ NOI at 5943.

⁵⁵ MLC Initial Submission at 15.

⁵⁶ *Id.* at 16–17.

⁵⁷ MLC Reply Submission at 11.

⁵⁸ MLC Initial Submission at 13.

⁵⁹ *Id.* at 13.

⁶⁰ *Id.*

⁶¹ *Id.* at 14. Users can register for access on the MLC’s website. *Data Programs*, MLC, <https://www.themlc.com/dataprograms> (last visited May 26, 2026).

that are not members of the MLC, but that may be entitled to royalties.⁶²

Its Distributor Unmatched Recording Portal (“DURP”) is a tool that allows music distributors, aggregators, and other eligible sound recording distributors to view data derived from monthly usage reports about recordings the MLC has been unable to match to registered musical works. The MLC explained that it created this tool “to address the unique challenges related to matching and distributing works written by independent or DIY artists.”⁶³

iii. Additional resources

In addition to these tools, the MLC created additional resources to assist in matching. It provides its members its “Top Unmatched Recording List,” which is a spreadsheet of the top 3,000 unmatched sound recording uses as reported to the MLC by DMPs based on calculated royalty value.⁶⁴ To the public, and as required by the statute, the MLC offers a Bulk Data Access Subscription, which provides access to the MLC’s musical work database in a bulk, machine-readable format.⁶⁵ It also created a Data Quality Initiative (“DQI”), which, as discussed further below, is a service that “provides participants with reports that highlight the discrepancies between the two sets of data so that they can more easily address those discrepancies and improve the quality of [t]he MLC’s data related to their works.”⁶⁶

iv. Commenters’ Views and MLC Response

Several commenters praised the MLC’s tools and resources, describing the mechanisms for “registering and managing catalogue information” as “user-friendly and efficient.”⁶⁷

⁶² MLC Initial Submission at 14.

⁶³ *Id.* at 14–15.

⁶⁴ *Id.* at 17.

⁶⁵ *Id.* at 13; *see also* 17 U.S.C. 115(d)(3)(E)(v) (“The mechanical licensing collective shall make such database available in a bulk, machine-readable format . . .”).

⁶⁶ MLC Initial Submission at 14.

⁶⁷ NMPA Initial Comments at 4 (“NMPA members have found the MLC’s tools for registering and managing catalogue information to be user-friendly and efficient.”); Big Machine Music Initial Comments at 1 (stating that the MLC’s “centralized database of song ownership information . . . has become a definitive source and allows for members (publishers, songwriters and administrators) to easily and efficiently manage their works”); NSAI Initial Comments at 2 (“The MLC built a publicly accessible database that is clear and concise, easily navigable and provides as much information as the MLC can publicly disclose.”); Peermusic Initial Comments at 3 (“In the areas in which we felt there was room for The MLC to build upon its initial successes, progress has to date been quick and highly visible: in the services provided to members, for example, including iterative improvements in

Reporting its experience, Big Machine Music stated that “efficiency of submitting the matches, the approval process of our claims and the timely manner in which they are then tied back to our account is yet another positive change” the MLC has delivered.⁶⁸

Other commenters were more critical. Some expressed general concern regarding the registration process and the length of time it took the MLC to register and claim works.⁶⁹

Others highlighted certain inefficiencies in the MLC’s Matching Portal.⁷⁰ The A2IM stated that “the current matching tool is not versatile enough to effectively match many titles, leaving a significant number of songs unmatched and contributing royalties to the black box.”⁷¹ Hameys Songs reported that it has had to submit its catalog “multiple times” to claim unmatched songs, and that “[m]any of these attempts have been unsuccessful and many of the titles are still in the unclaimed section of [t]he MLC website.”⁷²

Commenters also took issue with certain aspects of the Overclaims Tool. Some noted that it only permits resolution of claims made within the last 90 days.⁷³ Another called the tool “rudimentary for newly registered

portal access, client services, and new and creative methods to improve the quality of the musical works database.”).

⁶⁸ Big Machine Music Initial Comments at 1.

⁶⁹ Word Collections Initial Comments at 10 (“The MLC’s workflows for submitting and claiming works are woefully inefficient, unwieldy, unreliable, non-intuitive, and appear to vary in execution based on member creating a veritable black hole that negates the entire purpose of submitting works to The MLC in the first place.”); George Johnson Initial Comments at 1 (describing the MLC’s bulk song registration process as “almost impossible and time consuming”); *see also* A2IM Initial Comments at 3 (“Limits on API access, registration, and claims create bottlenecks that hinder the efficiency,” thus, “[t]he MLC should expand API access and simplify the registration and claiming processes to facilitate easier and faster transactions that will benefit the entire music ecosystem, not just those with greater resources.”); Abby North Initial Comments at 5 (encouraging the Office to provide guidelines for the MLC “regarding reasonable times from delivery of a match or claim by a member to processing”).

⁷⁰ Abby North Initial Comments at 5; Go to Eleven Entertainment Initial Comments at 1 (“With regard to submitting matches to unmatched works, their system is not ideal in any way as you cannot print out a complete excel list of such works by title, but can only make a claim on a song-by-song basis”); Lindvall, Lowery & Morgan Initial Comments at 13 (“[I]t appears that in order to use the Matching Tool, one must first be a Member and have registered your catalog. This slows down the matching process.”).

⁷¹ A2IM Initial Comments at 2.

⁷² Hameys Songs Initial Comments (“By resubmitting, we mean sending in the same titles and metadata information over and over again!”).

⁷³ Go to Eleven Entertainment Initial Comments at 5; Abby North Initial Comments at 3.

works,” calling for “further enhancements that includes all overclaims and disputes.”⁷⁴

Finally, commenters offered several suggestions regarding the MLC’s public tools and resources. For example, while Spirit Music Group praised the MLC’s Missing Member Lookup resource’s usefulness to “identify members that have not claimed royalties, and to identify errors for the writers and publishers” it represents, they suggested that there should be a way to also identify and quantify the corresponding recordings.⁷⁵ One commenter noted issues with the royalty report format,⁷⁶ although another praised the ease of processing such reports.⁷⁷

In its reply comments, the MLC reiterated its commitment to making continued enhancements to its tools and resources, noting upgrades to its “Claiming Tool, improvements to the individual and bulk registration tools, and refinements to the Matching Tool.”⁷⁸ Related to its work registration process, the MLC reported that it “consistently processes between 80% and 90% of the incoming registrations it receives in any given month within 21 days after the end of the month during which they are received,” and “now provides detailed rejection reasons for any incoming registration that it does not approve directly in the Registration History section of its Member Portal.”⁷⁹ Finally, while the MLC defended its bulk data format choice (DDEX), by stating that it is the most accessible and industry-standard format for bulk data, it encouraged members to contact customer service for formatting and accessibility concerns.⁸⁰

The Office supports the MLC’s continued efforts to improve its database tools and resources. In light of commenters’ suggestions, we encourage

⁷⁴ Spirit Music Group Initial Comments at 2.

⁷⁵ *Id.*

⁷⁶ Hameys Songs Initial Comments at 1 (explaining that the MLC uses .tsv files while other collective management organizations (“CMOs”) use PDF, Excel, or CSV). Relatedly, another commenter expressed concern that, although the bulk data access service is public, the data is provided in DDEX format such that, according to her, “there is no way you can use the bulk list unless you pay to convert it to a CSV” format. Go to Eleven Entertainment Initial Comments at 1–2.

⁷⁷ Warner Chappell Music Reply Comments at 2–3 (“The MLC provides members with detailed electronic statements via the portal. These statements are easier to process than many of the other CMO statements received by Warner Chappell around the world.”).

⁷⁸ MLC *Ex Parte* Letter at 3 (July 21, 2025).

⁷⁹ *Id.* at 6.

⁸⁰ MLC *Ex Parte* Letter at 5 (Nov. 20, 2025) (“The MLC’s support team is trained to assist Members unfamiliar working with these and other formats and The MLC’s Help Center already includes related step-by-step technical guidance.”).

it to make its data as accessible as resources permit for users of all levels of sophistication.

b. Songwriter Access

The Office also asked the MLC to describe its efforts to develop portal access for songwriters who are not self-administered (e.g., those represented by a publisher, administrator, or collective management organization (“CMO”)), to permit them to access, provide, or correct information about themselves and their works, including the ability to flag data issues with their publisher or other representative, to provide data directly to the MLC, and to have permissions-based access to view information such as stream counts and revenue.⁸¹ This inquiry built upon the Office’s earlier recommendations in our *Unclaimed Royalties Report*.⁸² Multiple comments echoed the Office’s recommendation, urging the MLC to develop “a portal within its website for published and/or administered songwriters to deliver data regarding their works.”⁸³

In October 2025, the MLC released its new Songwriter Hub, which is available to any songwriter with registered works. In this portal, songwriters are able “to construct a catalog of their registered works, filter and search their catalog for specific works, and export the data for their catalogs on demand in a variety of formats.”⁸⁴ Songwriters may also submit correction requests to update writer names and IPI numbers. While the Songwriter Hub does not appear to permit alerts or corrections to any other data, the MLC reports that it “plans to develop additional tools and functionality tailored for songwriters to enable them to participate more easily in the administration of their songs.”⁸⁵

The Office appreciates the MLC’s responsiveness to member concerns and looks forward to the ongoing enhancements that will be made to the Songwriter Hub during the MLC’s continued designation.

c. Data Quality and Management

Data quality is foundational to the MLC’s ability to perform its statutory role successfully. Accordingly, the NOI asked several questions related to the MLC’s data management. It also asked the MLC to provide an update on its progress implementing the Office’s recommendations from the *Unclaimed Royalties Report*, which instructed the MLC to develop mechanisms for error and fraud detection, employ third-party uses of data beyond DMP reporting to ensure that its data is in sync with the data held and submitted by authoritative sources, and incorporate broad use of standard unique identifiers.⁸⁶

Addressing the accuracy of its repertoire data, the MLC highlighted its DQI. It explained that the DQI “provide[s] a streamlined way for music publishers, administrators, self-administered songwriters and foreign CMOs to compare large schedules of their musical works’ data against” the MLC’s data.⁸⁷ The MLC provides participants with reports that highlight discrepancies between two sets of data so that users can resolve those discrepancies and improve the quality of the MLC’s data. In addition to working with participating publishers, self-administered songwriters, and administrators, it created a Data Quality Initiative Partner Program to partner with organizations that specialize in different aspects of music data services.⁸⁸

Regarding fraud detection, the MLC affirmed that it “proactively investigates instances of potential streaming fraud and pursues collaboration with [DMPs], distributors, aggregators, and other stakeholders within the music industry ecosystem to combat” such conduct.⁸⁹ While it noted that it must keep specific detection and prevention strategies confidential to preserve their effectiveness, the MLC explained that it engages with third-party vendors with fraud detection expertise and pursues collaboration with other industry stakeholders to bolster prevention and detection efforts.⁹⁰

Finally, the MLC confirmed that it “employs standard unique identifiers to the broadest extent reasonably appropriate, including in the works registration, share claiming, and matching processes, and for general data

maintenance activities.”⁹¹ This includes employing ISWC numbers, “if provided by rightsholders.”⁹²

While some commenters praised the MLC’s data management,⁹³ others proposed specific improvements. Chiefly, commenters called for the MLC to require and prioritize use of standard identifiers, like the ISWC and the IPI, in their work registrations.⁹⁴ Spirit Music Group asserted that “[e]xpanding the identification process using song titles and CISAC codes, i.e., the IPI and ISWC can enhance matching, improve results, and reduce unmatched recordings.”⁹⁵ Another commenter suggested the MLC should require “publishers to use IPI numbers of songwriters in their registrations” to prevent duplicate registrations.⁹⁶

In response, the MLC agreed that unique identifiers like ISWC and IPI numbers are valuable, and clarified that it requests ISWC and IPI information from all DMPs who report usage and from all members who register their works.⁹⁷ It confirmed that it “utilizes a number of data points and identifiers in its matching processes, including ISWC, ISRC, and IPI numbers.”⁹⁸ It does not, however, “exclusively rely on these identifiers for a variety of reasons, including the fact . . . that not all of the data it receives from [DMPs] in their usage reports and/or in the works registrations data it receives from rightsholders includes these identifiers, and sometimes the identifiers submitted to [t]he MLC by [DMPs] and rightsholders are not accurate.”⁹⁹

The Office believes that the MLC’s approach strikes the appropriate balance between the goal to reduce the number of unmatched works by employing standardized metadata and the goal of maintaining broad access to the database by not making such metadata a prerequisite for engagement. As the MMA’s legislative history notes, “[u]sing standardized metadata such as ISRC and ISWC codes, is a major step forward in reducing the number of

⁸¹ NOI at 5943.

⁸² *Unclaimed Royalties Report* at 50–51 (recommending that “represented songwriters be able to sign up with the MLC to gain appropriate access to the portal (or a tailored version of the portal), through which they can easily view and interact with information about their works, including the ability to alert [the MLC and] their publishers, administrators, or other representatives to have them register with the MLC (if they have not already done so) and/or to have them address any potential data issues flagged by the songwriter, including where information is missing, outdated, or incorrect”).

⁸³ Abby North Initial Comments at 2; Artist Rights Alliance Reply Comments at 2; BMAC & MAC Reply Comments at 3–4.

⁸⁴ MLC *Ex Parte* Letter at 3 (July 21, 2025).

⁸⁵ *Id.*

⁸⁶ *Unclaimed Royalties Report* at 56–71.

⁸⁷ MLC Initial Submission at 14.

⁸⁸ *Data Programs*, MLC, <https://www.themlc.com/dataprograms> (last visited May 26, 2026).

⁸⁹ MLC Initial Submission at 29.

⁹⁰ *Id.* at 29–30.

⁹¹ *Id.* at 10.

⁹² *Id.* at 12.

⁹³ Peermusic Initial Comments at 2 (“On an operational level, the transparency, reliability, and accuracy of reporting has been exceptional, opening new opportunities for peermusic to understand, analyze, and build on the data we receive”); see also Warner Chappell Music Reply Comments at 2 (calling the database “best in class”).

⁹⁴ Abby North Initial Comments at 6; BMAC & MAC Reply Comments; Christian Castle Reply Comments; Spirit Music Group Initial Comments at 2.

⁹⁵ Spirit Music Group Initial Comments at 2.

⁹⁶ Go to Eleven Entertainment Initial Comments at 4.

⁹⁷ MLC Reply Submission at 19.

⁹⁸ *Id.* at 21.

⁹⁹ *Id.*

unmatched works.”¹⁰⁰ With that aim, the Office had encouraged the MLC to employ standardized metadata “to the broadest extent reasonably appropriate, including in its registration and claiming processes, matching processes, and general data maintenance activities.”¹⁰¹ We agree, however, that some flexibility remains necessary in the context of registration and claiming, as requiring members to submit ISWCs, or other standard identifiers, may inhibit broader participation by publishers or songwriters who do not know or have access to that information.

i. Matching Practices

One of the MLC’s statutory duties is to match the sound recordings used by DMPs to their underlying musical works and match those musical works to their copyright owners, who must be identified and located.¹⁰² To assist our review of the MLC’s execution of this duty, the Office requested detailed information about its matching practices, including how it measures match accuracy. Specifically, the NOI asked how the MLC has worked to improve automated and manual matching since the blanket license became available, and how it plans to further enhance matching over the next five years, both matching sound recordings to musical works and matching musical works to identified and located copyright owners. We also asked it to explain how it is using quantifiable measurements to monitor its match rate confidence, and how it adjusts confidence levels without using numerical metrics.¹⁰³

The MLC’s response described a “multilayered” matching methodology, which includes automated and manual matching, a dedicated Matching Team, a quality-assurance process, and additional matching initiatives.¹⁰⁴ Its methodology begins with employing automated “elastic search” technology provided by one or more of its vendors to match sound recording information received from DMPs to musical work information in the MLC’s database.¹⁰⁵ In its automated process, unmatched sound recordings are also rerun against subsequent monthly snapshots, which incorporate newly submitted

registration data, to see if new data results in new matches.¹⁰⁶

Sound recordings that are not matched during this process are manually reviewed by the Matching Team, which uses “custom-built technology and public resources to research missing data elements and make manual matches.”¹⁰⁷ During this process, MLC staff conducts quality assurance, using “CMO databases, music credit databases, DMP websites, content owner websites, and other niche and genre-specific sources” to cross-reference multiple sources to validate manual matches.¹⁰⁸

Any sound recordings that remain unmatched are presented in the MLC’s Matching Tool “to allow [m]embers to search for and identify sound recordings and independently propose matches. The Matching Team then manually verifies the accuracy of each [m]ember-proposed match.”¹⁰⁹ The MLC also highlighted additional matching initiatives. For example, it pointed to its Supplemental Matching Network, which is a network of vendors that use “complementary technologies” to supplement its internal matching activities.¹¹⁰ Currently, the network consists of organizations that specialize in: music data and licensing (Blokur); compiling music credits from record labels, distributors, publishers and industry associations (Jaxsta); audio recognition technology (Pex); and data matching and administration (Salt and SX Works).¹¹¹

According to the MLC, this methodology has resulted in high match rates. It reported that, as of its initial submission date, its “current overall match rate across all usage periods stands at 91.6%, with year-specific match rates of 93.7% for 2021, 93.0% for 2022, 91.9% for 2023, and 90.3% for 2024.”¹¹² These rates are based on “the total amount of royalties matched to registered musical works compared to the total royalties reported to [t]he MLC by [DMPs].”¹¹³

To measure the accuracy of its match rates, the MLC explained that it routinely “runs a number of different analytical processes of the matches it has made and conducts systematic,

regular testing of its matches.”¹¹⁴ Its Matching Team regularly examines random sample sets of automated matches and analyzes the results.¹¹⁵ The MLC stated that its match rate confidence is further bolstered by comparing the matches produced by its internal processes with the matching data provided by its Supplemental Match Network vendors.¹¹⁶

Finally, the MLC highlighted other planned efforts to improve its match rate confidence and its ability to match sound recordings to the musical works they embody. For example, it noted that it is “working with other large CMOs on pilot programs to exchange matching data, in order to create yet another point of comparison that both organizations can use to assess the accuracy of their respective matches and to identify supplemental matches.”¹¹⁷ It explained, “[t]his approach of assembling multiple points of comparison offers a compelling way for [t]he MLC to monitor the efficacy and accuracy of its internal processes.”¹¹⁸ In addition, it noted that, in response to user feedback, it is developing mechanisms for members with larger catalogs to deliver proposed matches in bulk.¹¹⁹ These proposed matches would then be reviewed by a supplemental matching vendor for automated verification.¹²⁰

Many commenters highlighted the match rate as evidence that the MLC’s matching methodology has been successful.¹²¹ The NMPA commented that “[t]he MLC has . . . worked diligently to reduce the incidence of unmatched and unclaimed royalties through better ownership data, the use of manual matching and partnerships with other technology vendors, resulting in an historically high average match rate of over 90%.”¹²² One coalition of music publishers stated that they “believe that there is a direct correlation between the tools offered by the MLC . . . and our respective publishers’ Song Match Rate.”¹²³

Other commenters, however, took issue with how the MLC defines its match rate.¹²⁴ Attorney Gwendolyn Seale stated, “As the most popular musical works are the ones generating the bulk of mechanical royalties over a

¹⁰⁰ Conf. Rep. at 7.

¹⁰¹ *Unclaimed Royalties Report* at 65.

¹⁰² 17 U.S.C. 115(d)(3)(C)(i)(III).

¹⁰³ NOI at 5943; see The Mechanical Licensing Collective, 2022 Annual Report 9 (2023) (“MLC 2022 Annual Report”), <https://www.themlc.com/hubfs/The%20MLC%202022%20Annual%20Report.pdf> (stating that the MLC “does not use numerical metrics to monitor match rate confidence”).

¹⁰⁴ MLC Initial Submission at 18–21.

¹⁰⁵ *Id.* at 18.

¹⁰⁶ *Id.* at 19.

¹⁰⁷ *Id.*

¹⁰⁸ The Mechanical Licensing Collective, 2024 Annual Report 53 (2025) (“MLC 2024 Annual Report”), <https://www.themlc.com/hubfs/The%20MLC%202024%20Annual%20Report.pdf>.

¹⁰⁹ MLC Initial Submission at 19.

¹¹⁰ *Id.* at 19–20.

¹¹¹ *Id.* at 19, 31–32.

¹¹² MLC *Ex Parte* Letter at 2 (July 21, 2025).

¹¹³ MLC Initial Submission at 20.

¹¹⁴ *Id.* at 22.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 20.

¹²⁰ *Id.* at 20, 22.

¹²¹ CMPA Initial Comments at 2.

¹²² NMPA Initial Comments at 4–5.

¹²³ CMPA Initial Comments at 2.

¹²⁴ Gwendolyn Seale Initial Comments at 3–4; George Johnson Initial Comments.

given month and are typically owned and/or controlled by the major music publishers with the resources and capabilities to constantly monitor activities concerning their clients' musical works and engage in manual matching, the current definition of match rate (*i.e.*, the royalty-based definition) does not mean very much by itself.”¹²⁵ Seale continued, “It would be useful for the MLC to also provide the monthly match rate on a recordings-to-musical works-matched basis,” or a works-based calculation,¹²⁶ and argued that such data would “shine a light on the efficacy of the MLC’s and its vendors’ matching technology and would help to ensure the musical works of countless self-published songwriters are being matched to reported sound recordings.”¹²⁷

The MLC explained that a royalties-based calculation is standard for most CMOs. While it disagreed that a works-based calculation was warranted, in light of commenter concerns the Office requested further information regarding its match rate by royalty value. In response, the MLC defined five royalty tiers representing the cumulative amount of mechanical royalties earned by a given work since it began operating in January 2021: (1) greater than \$5,000; (2) between \$1,000 and \$5,000; (3) between \$500 and \$1,000; (4) between \$100 and \$500; and (5) under \$100.¹²⁸ The MLC’s current average match rates for the top three tiers are each above 90%, and for the highest tier it is over 99%. For works with a cumulative royalty value between \$100 and \$500, it is approximately 83%. And for works with a cumulative royalty value under \$100, it is 63%.¹²⁹

The Office asked whether the MLC has identified any notable trends or patterns in reported usage that it has been unable to match through its efforts to date. It also asked the MLC about its attempts to address these trends or patterns, and specifically, to describe any targeted efforts it has undertaken or plans to undertake in the next five years.¹³⁰

In response, the MLC explained, “[s]ound recordings with high stream counts that generate higher royalties are more likely to be matched to a work registered with [t]he MLC, while sound recordings with low stream counts and minimal royalties . . . are less likely to be matched—often because the works

featured in those recordings have not been registered with [t]he MLC.”¹³¹ The MLC’s data appears to validate this trend. According to the data, over 500 million unmatched reported sound recordings have less than one dollar in accrued mechanical royalties across all blanket periods to date (with the average being approximately five cents).¹³² The MLC reasoned that rightsholders of these “long tail” works¹³³ “have less of a financial incentive to complete the work registration process since those works generate minimal royalties.”¹³⁴

The MLC further stated that it created the DURP program to address the “unique challenges related to matching and distributing works written by independent or DIY artists,” *e.g.*, “songs with lower stream counts and royalties.”¹³⁵ As noted above, the DURP program engages independent distributors, aggregators, and other eligible sound recording distribution companies to identify the rightsholders for the works embodied in sound recordings with lower stream counts.¹³⁶ As of May 2026, the initiative includes at least 125 enrolled distributors.¹³⁷

Based on the Office’s review of the MLC’s submissions, its matching processes and quality assurance analysis appear to function well. In accordance with our *Unclaimed Royalties Report* recommendations, the MLC reports employing both automated and manual matching processes that engage a broad array of resources. Its efforts include searching public and private third-party databases and leveraging its membership and industry partners. The Office supports the expansion of initiatives that contribute to improving the MLC’s methodology and match rate confidence, including DURP and the Supplemental Matching Network.

The Office applauds the MLC’s efforts to improve match rates for “long tail” works. Its disclosure of match rates by the royalty value tiers provided during this proceeding provides a helpful additional metric. If the MLC were to provide this information going forward, it would better assist with gauging the effectiveness of its matching methodology and initiatives for works earning different ranges of royalties.

ii. Collection and Distribution of Royalties, Including Unclaimed Accrued Royalties

To assess the MLC’s performance related to its duty to collect and distribute royalties, the Office requested information about its royalty distributions. Specifically, we asked the MLC for an update on its efforts to implement *Unclaimed Royalties Report* recommendations, which included the recommendation to adopt transparent, practical, and equitable policies, practices, and procedures, especially with respect to holding and distributing unclaimed accrued royalties.¹³⁸

The MMA makes the MLC responsible for “[c]ollect[ing] and distribut[ing] royalties from [DMPs]” using the statutory mechanical license.¹³⁹ Any “royalties that cannot be distributed due to” “an inability to identify or locate a copyright owner of a musical work (or share thereof)” or “a pending dispute before the [D]ispute [R]esolution [C]ommittee of the [MLC],” must be “deposit[ed] into an interest-bearing account.”¹⁴⁰ For those works for which royalties have accrued but the copyright owner is unknown or not located, the MLC holds such royalties for a minimum time period, as designated by the statute. In general, this period is “not less than 3 years after the date on which the funds were received by the [MLC].”¹⁴¹ At the end of the statutory minimum holding period, accrued royalties for musical works (and shares) that remain unmatched become eligible for distribution by relative market share “to copyright owners identified in the records of the collective,” at which point they become “unclaimed accrued royalties.”¹⁴²

The statute also includes a “transition period” for the period following the MMA’s enactment in October 2018, and before the blanket license became available on January 1, 2021.¹⁴³ During the transition period, if the musical work copyright owner was unknown, anyone seeking to obtain a compulsory license to make digital phonorecord deliveries could rely on a limitation on liability that required the DMP to “continue[] to search for the musical

¹³¹ MLC Initial Submission at 23.

¹³² *Id.* at 23 n.46.

¹³³ The MLC refers to “long tail” works as those works “with low stream counts and minimal royalties . . . [that] are less likely to be matched.” *Id.*

¹³⁴ *Id.*

¹³⁵ MLC 2024 Annual Report app. at 53; MLC Initial Submission at 14, 23.

¹³⁶ MLC Initial Submission at 23.

¹³⁷ *DURP Partners*, MLC, <https://www.themlc.com/durp-partners> (last visited May 26, 2026).

¹³⁸ NOI at 5942 n.36 (citing the *Unclaimed Royalties Report*).

¹³⁹ 17 U.S.C. 115(d)(3)(C)(i)(II).

¹⁴⁰ *Id.* at 115(d)(3)(G)(i)(III).

¹⁴¹ *Id.* at 115(d)(3)(H)(i); *see also* Conf. Rep. at 11 (“For unmatched works, the collective must wait for the prescribed holding period of three years before making such distribution. This is intended to give the collective time to actively search for the copyright owner.”).

¹⁴² 17 U.S.C. 115(d)(3)(J)(i), (e)(34).

¹⁴³ H.R. Rep. No. 115–651, at 10 (2018); S. Rep. No. 115–339, at 10 (2018).

¹²⁵ Gwendolyn Seale Initial Comments at 3–4.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ MLC *Ex Parte* Letter at 5 (July 21, 2025).

¹²⁹ *Id.*

¹³⁰ NOI at 5943.

work copyright owner” using good-faith, commercially reasonable efforts and bulk electronic matching processes.¹⁴⁴ If the musical work copyright owner was not found before the end of the transition period, the DMP had to account for and transfer the accrued royalties (called “historic royalties”) to the MLC in 2021 for further processing. According to the MLC, twenty-one DMPs submitted reporting and transferred royalties related to streaming activities that took place between 2007 and 2020.¹⁴⁵ Unclaimed historic royalties are subject to a future market-share distribution, like unclaimed blanket license royalties.

The MLC provided an overview of its relevant metrics and achievements in response to the Office’s inquiry. First, it provided distribution metrics for blanket license royalties, historical royalties, and voluntary licenses. As of its June 2025 distribution, the MLC reported processing “over \$3.11 billion in total royalties, comprising approximately \$2.865 billion in blanket royalties directly distributed by [t]he MLC and \$246 million in voluntary royalties (valued at the applicable statutory rates) processed by the MLC, but distributed by DMPs to licensors under voluntary license arrangements.”¹⁴⁶ Each year since its inception, the MLC has completed every royalty distribution “on time or early” for the usage that took place in each relevant year.¹⁴⁷ It reports that it has “matched nearly \$314 million of the \$397.20 million in historical unmatched royalties that DMPs transferred in February 2021 (or 79% of the total amount transferred) and distributed approximately \$223.42 million (or more than 56% of the total transferred).”¹⁴⁸

The MLC previously reported that, of the \$568,945,432.36 in royalties held related to 2021–2024 usage, \$243,856,456.84 is related to unclaimed royalties.¹⁴⁹ And, of the \$397,196,646.86 in historical unmatched royalties collected,

\$195,779,461.26 remain unmatched and \$74,473,413.08 remain unclaimed.¹⁵⁰

The MLC has not yet distributed unclaimed royalties. In early 2026, however, it announced that it has begun developing a policy to distribute the remaining unmatched and unclaimed blanket royalties.¹⁵¹ While the MLC has, to date, prioritized the growth and engagement of its membership and the continued improvement of data necessary to facilitate accurate matching, it also recognizes that Congress did not contemplate the indefinite retention of blanket royalties.

Starting in early 2027, the MLC plans to start making market share distributions of unmatched and unclaimed royalties on a monthly, per-song and “pro rata basis for each [DMP] and offering”; in other words, “[e]very song that earned monthly royalties . . . will receive its pro rata share of the remaining royalties for that month.”¹⁵² The MLC reports that the “current amount of remaining unmatched and unclaimed royalties from January 2021 that would be eligible to be included in [the] first monthly distribution in 2027 is less than \$7 million.”¹⁵³ Due to continued reprocessing, along with its continued matching efforts focused on the remaining 2021 royalties, it estimates that the remaining amount will likely be lower by January 2027. It plans to begin processing the remaining historical (*i.e.*, pre-January 2021) unmatched royalties at a later date.

Many commenters praised the MLC’s collection and distribution of blanket royalties, noting that it “has distributed monthly royalty payments for all [DMPs] on time or early every month since the first distribution in April 2021,” which “has allowed U.S. mechanical streaming income to become one of the most predictable and transparent revenue sources in the music industry.”¹⁵⁴ Certain other commenters, however, reported payment delays due to processing errors and frivolous ownership disputes.¹⁵⁵

¹⁵⁰ *Id.* at 18.

¹⁵¹ *Looking One Year Ahead: Market Share Distributions*, MLC, <https://pages.themlc.com/looking-one-year-ahead-market-share-distributions> (last visited May 26, 2026).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Big Machine Music Initial Comments at 2; *see* NMPA Initial Comments at 3 (“Since its inception, the MLC has distributed over \$2 billion in royalties to thousands of rightsholders, making every monthly royalty distribution on time.”); NSAI Initial Comments at 2; Recording Academy Reply Comments; Reservoir Initial Comments.

¹⁵⁵ *See, e.g.*, Word Collections Initial Comments at 17 (stating that MLC’s Dispute Policy favors those claimants who “show[] up first,” to the detriment of “uneducated songwriters” less familiar with how the MLC operates”); Music Copyright Consultant

While the Office acknowledges the reported payment delays and alleged errors, it appears the MLC maintains an infrastructure capable of troubleshooting such issues. It has established common sense policies that address disputes and catalog transfers through a thoughtful and deliberate process. When a copyright owner believes that there has been a payment error, we expect the MLC to review and resolve any issues in a timely and fair manner.

Overall, the Office applauds the MLC’s collection and distribution efforts, which have resulted in over \$3.9 billion in royalties paid to copyright owners. These efforts have had a significant and measurable impact on songwriters’ and publishers’ income, providing increased revenue reliability and predictability.

The Office also supports the MLC in commencing a process to develop policies governing the distribution of unclaimed royalties pursuant to the statute. We look forward to working with the MLC to ensure that its policies and processes are transparent, fair, and equitable for all songwriters and publishers.

iii. Fraud and Frivolous Disputes

Next, the Office requested information about the MLC’s efforts to combat fraudulent ownership claims, frivolous ownership disputes, and streaming fraud, specifically: (1) “any steps that the [MLC] is taking to protect against the incidence of fraudulent ownership claims and frivolous ownership disputes”; (2) “whether these steps have been successful”; and (3) “whether and to what extent the [MLC] is working with DMPs, distributors, aggregators, or others to protect against streaming fraud and the status of such efforts, including their success or failure.”¹⁵⁶

Regarding frivolous ownership disputes, the MLC asserted that its Ownership Dispute Policy is designed to “efficiently address ownership disputes between or among copyright owners” and “deters” frivolous claims because it “require[s] parties that initiate disputes to provide written documentation substantiating their

Group II Initial Comments (reporting payment errors and delays due to MLC’s method of calculating royalties for medleys and music works that include interpolations and samples); Go to Eleven Entertainment Initial Comments at 4–5 (claiming that the MLC does not freeze payments for works in dispute until resolution, and suggesting that to avoid payment issues” “[t]he minute [t]he MLC is served notice of via a Catalog Transfer Form, all royalties should be put on hold until the transfer is confirmed and set up by [t]he MLC”).

¹⁵⁶ NOI at 5943.

¹⁴⁴ 17 U.S.C. 115(b)(2)(A), (d)(9)(D)(i), (d)(10)(A)–(B); *see* H.R. Rep. No. 115–651, at 4, 10; S. Rep. No. 115–339, at 3, 10, 22.

¹⁴⁵ *Historical Unmatched Royalties*, MLC, <https://www.themlc.com/historical-unmatched-royalties> (last visited May 26, 2026).

¹⁴⁶ MLC *Ex Parte* Letter at 1–2 (July 21, 2025).

¹⁴⁷ The Mechanical Licensing Collective, 2021 Annual Report 1 (2022), <https://www.themlc.com/hubfs/Marketing/23856%20The%20MLC%20AR2021%206-30%20REFRESH%20COMBINED.pdf>; MLC 2022 Annual Report at 2; The Mechanical Licensing Collective, 2023 Annual Report 2 (2024), <https://www.themlc.com/hubfs/2023%20MLC%20Annual%20Report.pdf>; MLC 2024 Annual Report at 1.

¹⁴⁸ MLC *Ex Parte* Letter at 2 (July 21, 2025).

¹⁴⁹ MLC 2024 Annual Report app. at 17.

claim(s) within a fixed time frame.”¹⁵⁷ It explained that this requirement “reduces the likelihood that parties without legitimate ownership claims can affect timely distribution of related royalties.”¹⁵⁸

Concerning fraudulent ownership claims, the MLC states that it “has implemented a multi-faceted strategy for identifying and mitigating fraudulent ownership claims” that involves multiple internal teams monitoring incoming data for signs of fraud at every stage of the MLC’s royalty distribution process.¹⁵⁹ When MLC staff observe data anomalies, they escalate those observations for greater scrutiny.¹⁶⁰

Finally, regarding streaming fraud, the MLC confirmed that it “proactively investigates instances of potential streaming fraud and pursues collaboration with [DMPs], distributors, aggregators, and other stakeholders within the music industry ecosystem to combat streaming fraud.”¹⁶¹ While the MLC kept its specific detection and prevention strategies confidential “to preserve their effectiveness,” it explained that its strategies include, in addition to its own internal efforts, “engaging third-party vendors with expertise in detecting fraud” and “actively pursuing collaboration with other industry stakeholders.”¹⁶²

The Office supports the MLC’s proactive work to combat fraud. Its collaborative initiatives in this area are important and appear to be contributing to improved data accuracy and integrity. We will continue to monitor these efforts as they progress.

2. Investment in Resources and Vendor Engagement

As noted above, to perform its statutory duties, the MLC invests in relevant resources and arranges for services of outside vendors. The NOI inquired about these activities, including the MLC’s reliance on third-party vendors to support its operations and fulfill its statutory obligations.¹⁶³ The Office also asked the MLC to provide information about its Supplemental Matching Network vendors, “including the specific functions that they perform, or have been asked to perform, the vendors’ relevant experience with clients and projects involving similar scale and

type, or their industry-specific knowledge.”¹⁶⁴

The MLC’s initial response provided general information about its third-party vendors’ business capabilities.¹⁶⁵ DIMA, the DLC, and other commenters advocated for greater transparency,¹⁶⁶ and in subsequent meetings with the MLC, the Office requested further information. In response, the MLC elaborated that it “evaluates vendor performance through multiple, standard mechanisms that establish expectations for responsiveness, turnaround times, fulfillment, and consistency.”¹⁶⁷ It explained that “the vendors that comprise its Supplemental Matching Network provide a range of matching-related services” and “collectively assist [t]he MLC with matching tasks (with the specific allocation of work among them subject to adjustments to meet [t]he MLC’s evolving matching needs).”¹⁶⁸ These “matching tasks” include “(a) supplementing [t]he MLC’s core matching by applying independent work-to-recording and recording-to-work matching services; (b) validating and expanding matches between sound recordings and musical works; (c) finding additional versions of the same recordings across [DMPs] so all related uses are captured and tied to works already matched; [and] (d) identifying non-musical content so it can be removed from the royalty pool.”¹⁶⁹

The Office understands the MLC’s need to maintain flexibility as it allocates matching tasks among its vendors. The information provided is sufficient for purposes of this designation proceeding. To the extent additional transparency is warranted, we will address those considerations elsewhere, including in the context of the MLC’s annual reporting obligations. We will continue to monitor how the MLC evaluates vendor performance and determines whether to continue engagement.

¹⁶⁴ *Id.* at 5943. Office regulations also require the MLC to provide in its annual report the MLC’s “selection of new vendors during the preceding calendar year, including the criteria used in deciding to select such vendors, and key findings from any performance reviews of the mechanical licensing collective’s current vendors.” 37 CFR 210.33(b)(10). The information must “include a general description of any new request for information (RFI) and/or request for proposals (RFP) process, either copies of the relevant RFI and/or RFP or a list of the functional requirements covered in the RFI or RFP, the names of the parties responding to the RFI and/or RFP.” *Id.*

¹⁶⁵ MLC Initial Submission at 30–32.

¹⁶⁶ *See, e.g.,* DLC & DIMA Initial Comments at 15; Gwendolyn Seale Initial Comments at 7; Spirit Music Group Initial Comments at 3.

¹⁶⁷ MLC *Ex Parte* Letter at 5 (Nov. 20, 2025).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

3. Funding

The MMA directs the MLC to report on procedures “to guard against fraud, abuse, waste, and the unreasonable use of funds.”¹⁷⁰ In evaluating whether the current MLC designation should be continued, the MMA’s legislative history directs the Office to consider any “evidence of fraud, waste, or abuse, including the failure to follow the relevant regulations adopted by the Copyright Office.”¹⁷¹ Accordingly, the Office requested information about the MLC’s “procedures to safeguard its use of the assessment funds against abuse, waste, and other unreasonable expenditures.”¹⁷² We also asked the MLC to discuss “whether it ha[s] become more efficient over time[.] . . . address[ing] with specificity any expenditure categories (e.g., personnel costs, information technology, professional fees, outreach, education, communication & events, insurance, rent, computer equipment, & office expenses) that have significantly increased since January 2021,” and providing a detailed explanation for any such increase.¹⁷³ In addition to the MLC’s submission in this proceeding, its annual reports aid in the Office’s evaluation.¹⁷⁴ They include information on the MLC’s “[b]udgeting and expenditures,” “total costs for the preceding calendar year,” projected annual budget, and “[e]xpenses that are more than 10 percent of the annual mechanical licensing collective budget.”¹⁷⁵

a. Safeguarding Use of Assessment Funds and Efficiency

The MLC identified internal and external controls that ensure responsible use of assessment funds.¹⁷⁶ Its internal controls include “structured approval

¹⁷⁰ 17 U.S.C. 115(d)(3)(D)(ix)(II)(bb)(BB) (directing the MLC to ensure that periodic audit reports address the implementation and efficacy of certain procedures). As noted above, the DMPs fund the MLC’s operations through an administrative assessment that is established by the Copyright Royalty Judges.

¹⁷¹ H.R. Rep. No. 115–651, at 6.

¹⁷² NOI at 5944. Note that the MMA requires the MLC to retain a qualified auditor to examine its books, records, and operations and prepare a report on these topics for the MLC’s Board. *See* 17 U.S.C. 115(d)(3)(D)(ix)(II). The auditor’s letter to the MLC’s Board can be found on the MLC’s website. Letter from WithumSmith+Brown, P.C. to the Board of Directors of the MLC (Dec. 22, 2023), [https://www.themlc.com/hubfs/Auditor%20Letter%20to%20Board%20re%20MMA%20Audit%20Provision%20\(115\(d\)\(3\)\(D\)\(ix\)\(II\)\).pdf](https://www.themlc.com/hubfs/Auditor%20Letter%20to%20Board%20re%20MMA%20Audit%20Provision%20(115(d)(3)(D)(ix)(II)).pdf).

¹⁷³ NOI at 5944.

¹⁷⁴ The MLC’s annual reports and public financial statements are available at <https://www.themlc.com/governance>.

¹⁷⁵ 37 CFR 210.33(b)(3)–(5), (7).

¹⁷⁶ MLC Initial Submission at 33–35.

¹⁵⁷ MLC Initial Submission at 29.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 28–29.

¹⁶⁰ *Id.* at 29.

¹⁶¹ *Id.*

¹⁶² *Id.* at 29–30.

¹⁶³ NOI at 5941.

processes for expenditures and payments, emphasizing checks at multiple levels to ensure accountability.”¹⁷⁷ According to the MLC, monitoring mechanisms are in place to review vendor payments, employee-related financial transactions, and budgeting.¹⁷⁸ It stated that its Budget and Performance Advisory, Audit, and Compensation committees provide further “oversight to ensure judicious use of resources and prevention of abuse, waste, and unreasonable expenditures.”¹⁷⁹

The MLC also described its external controls, which include the statutorily required quinquennial outside audit, which was last completed in 2023.¹⁸⁰ The external auditor concluded that it had “‘obtained reasonable assurance that the financial statements as a whole were free from material misstatements, whether caused by fraud or error, in accordance with AU-C Section 240 Consideration of Fraud in a Financial Statement Audit, as issued by [the American Institute of CPAs].’”¹⁸¹ Additionally, the MLC has “engage[d], on a voluntary basis, a qualified and independent outside auditor to examine its books and records,” and each year since 2021, “[e]ach audit has resulted in an unqualified opinion (typically known as a ‘clean audit report’) that the financial statements presented fairly the position of [t]he MLC in all material aspects in accordance with accounting principles generally accepted in the U.S. (‘GAAP’).”¹⁸²

Finally, the MLC noted that it “publicly discloses detailed analysis of its annual budget, annual collective total costs, and annual expenditures applied against assessment fees collected, as well as publicly disclosing copies of each annual IRS Form 990 filings.”¹⁸³

Very few commenters addressed the MLC’s handling of administrative assessment funds.¹⁸⁴ The DLC and DIMA, however, questioned its expenditure of resources to match

sound recordings that have less than one dollar in accrued mechanical royalties across all blanket periods to date.¹⁸⁵ They argued that “it is highly inefficient for MLC[] to expend substantial resources to match these works, with what can’t even be described as marginal benefits to creators.”¹⁸⁶ Finally, they raised concerns related to transparency and access to information about certain vendor contracts and administrative assessment data.¹⁸⁷

With regard to its efforts to match “long tail” works, the MLC noted the Office’s previous encouragement to “be careful in adopting and applying thresholds or cost/benefit analyses to appropriately balance the need to be cost-effective and fiscally responsible with the core duty to vigorously match.”¹⁸⁸ It explained that “[i]t is precisely [the DMP’s] disregard for the value of robust and comprehensive matching efforts that caused many of the problems that the MMA sought to address, and it validates the prescient decision of Congress to take control over the royalty administration process away from [DMPs] and give it instead to a statutory collective governed by a Board consisting almost entirely of rightsholders.”¹⁸⁹

As further evidence of its fiscal efficiency, the MLC highlighted administrative fee ratios it publishes in its annual reports. These ratios “are calculated by dividing the respective administrative assessment for the calendar year by royalty metrics, with the metric most relevant for comparison with industry benchmarks being total royalty pools reported to [t]he MLC.”¹⁹⁰ In its initial submission, the MLC reported administrative fee ratios at 4.23% in its first year of operation, 3.97% in 2022, and 3.07% in 2023.¹⁹¹ For the 2024 calendar year, the MLC reported an administrative fee ratio at 3.86%.¹⁹² These ratios are comparable to or lower than those of other collective management organizations.¹⁹³

Some commenters rejected the MLC’s assertion that administrative fee ratios are appropriate measures of efficiency in the context of the blanket license.¹⁹⁴ The DLC and DIMA argued that “[g]iven the high fixed costs of administering the section 115 license, focusing only on the administrative expense ratio leads to the conclusion that MLC[] is more efficient or less efficient merely because DMPs generated more or less revenues.”¹⁹⁵ The DLC and DIMA contended that the MLC’s spending should correlate to the advancement of its statutory duties, such as “‘matching’ tracks to underlying musical works, and setting up systems to receive usage reports and make payments,” notwithstanding how much revenue the services generate.¹⁹⁶

Fiscal responsibility and efficiency remain core values in the Office’s assessment of the MLC’s past performance, especially as Congress envisioned the MLC “operat[ing] in a transparent and accountable manner.”¹⁹⁷ The Office acknowledges the MLC’s efforts to function accordingly. Indeed, since its initial designation, it has delivered to the Office an annual report detailing all budgeting information required under the statute and the Office’s regulations. In addition to the MLC’s internal efforts to guard and expend funds responsibly, such public reporting permits stakeholders to remain vigilant against waste.

The Office recognizes that there may be a point at which expenditures associated with matching activity could become disproportionate to the value of royalties distributed. At present, however, the record does not indicate that the MLC is approaching such a threshold. To the contrary, its continued efforts to match works, including those with low accrued royalties, are consistent with its statutory obligation to identify and pay rightsholders, particularly prior to making any market-based distribution of unmatched funds.

The Office further concludes that commenters have not established that

¹⁷⁷ *Id.* at 33.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 34.

¹⁸⁰ *Id.* at 33–34.

¹⁸¹ *Id.* at 34 (quoting Letter from WithumSmith+Brown, P.C. to the Board of Directors of the MLC (Dec. 22, 2023)).

¹⁸² *Id.*

¹⁸³ *Id.* at 34–35.

¹⁸⁴ See, e.g., Abby North Initial Comments at 3–4 (stating that the MLC should “spend more money on correcting incorrect party data and mismatched recording data so that the correct parties receive the distributed royalties”); NMPA Initial Comments at 7–8 (highlighting that “the deal struck between music publishers and DMPs during the drafting of the MMA was the agreement that DMPs would fund ‘the collective total costs’ of the MLC” (emphasis omitted)).

¹⁸⁵ See DLC & DIMA Initial Comments at 19.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 15.

¹⁸⁸ MLC Reply Submission at 25 n.66 (quoting *Unclaimed Royalties Report* at 82).

¹⁸⁹ *Id.* at 24.

¹⁹⁰ MLC Initial Submission at 35.

¹⁹¹ *Id.* at 35.

¹⁹² MLC 2024 Annual Report app. at 15.

¹⁹³ According to the MLC’s CEO, “no other collective management organization has ever reported an administrative cost percentage less than 5%, and most similar organizations around the world report percentages between 10% and 20% or more.” MLC Initial Submission at 35–36 (quoting *Five Years Later—The Music Modernization Act Before the Subcomm. on Courts, Intell. Prop. & the Internet of the H. Comm. on the Judiciary*, 118th

Cong. (2023) (responses to questions on the record of Kris Ahrend, CEO, Mechanical Licensing Collective)). The Office notes that SoundExchange has reported administrative rates between four and six percent. *Why should I register with SoundExchange?*, SoundExchange, <https://www.soundexchange.com/faq/why-should-i-register-with-soundexchange/> (last visited May 26, 2026).

¹⁹⁴ DLC & DIMA Initial Comments at 17; Abby North Initial Comments at 3–4.

¹⁹⁵ DLC & DIMA Initial Comments at 17–18.

¹⁹⁶ *Id.* at 17; see also Abby North Initial Comments at 3–4 (“The goals should be to have the highest match and claim rate, the cleanest data, and the most accurately paid members, not the lowest admin fee.”).

¹⁹⁷ S. Rep. No. 115–339, at 7.

the MLC's current metrics for assessing efficiency are unreasonable. While there are multiple ways to evaluate efficiency, administrative fee ratios are a commonly used and informative metric among CMOs. The MLC's reported ratios fall within a range that supports a finding of responsible stewardship. Therefore, we find no basis to disturb the MLC's designation for that reason.

b. Increased Expenditures

Next, the Office asked the MLC to provide information on any expenditure categories that have significantly increased since January 2021. In response, the MLC addressed two expenditure increases. First, it explained that "overall staffing expenses have significantly increased since January 2021 as [t]he MLC has continued to build out its internal teams by hiring new team members."¹⁹⁸ Second, it explained that expenses related to education and outreach increased after 2022, because "the COVID-19 pandemic prevented [t]he MLC from conducting numerous activities that [t]he MLC would have otherwise conducted from the outset," and during that time it engaged in educational programs and activities exclusively on a virtual basis.¹⁹⁹ As pandemic-related restrictions relaxed, the MLC pivoted to add more outreach and education through hosting and participating in in-person events, which increased costs.²⁰⁰

Based on the information provided, the Office finds that the MLC has reasonably explained the identified increases in expenditures, including those related to staffing and outreach activities. These explanations are consistent with its ongoing efforts to build operational capacity and engage with stakeholders pursuant to its statutory duties. At the same time, the Office emphasizes the importance of continued attention to the efficient use of assessment funds, particularly as certain expenditures have grown. Thus, we encourage the MLC to consider whether additional or more granular metrics may assist in evaluating the effectiveness and efficiency of such spending, with particular focus on education and outreach activities. The Office will continue to monitor these issues, including through review of the MLC's annual reports and other disclosures.

4. Governance

In the NOI, the Office requested information related to the MLC's governance, including, *inter alia*: a copy of the MLC's bylaws; an explanation of how it approaches dispute resolution with interested parties "regarding interpretation of the MMA or the Office's regulations"; an explanation of how it has been ensuring that "its policies, procedures, and practices are transparent and accountable" and "that all board and committee members have equal access to information in the [MLC's] possession"; the "status of any policies or procedures related to the distribution of unclaimed accrued royalties and accrued interest"; and any other "policies addressing its statutory duties, procedures, practices, and guidelines."²⁰¹

Overall, the Office finds that the MLC's governance meets the MMA's requirements and supports the MLC's continued designation. On this topic, comments noting concerns or improvements focused on the MLC Board's composition, the Board's Songwriter Trade Group Director, the MLC's authority to interpret the MMA or Copyright Act, transparency, and certain MLC policies.

a. Bylaws, Board, and Committees

The MLC's Board and statutory committee members are selected in accordance with its bylaws.²⁰² When a nonvoting MLC Board member is selected, that candidate "is then referred to the Register of Copyrights for evaluation, along with an explanation of how the candidate satisfies the MMA's eligibility requirements" and becomes elevated to the Board only after the Librarian of Congress's appointment.²⁰³ The MLC provided a copy of its bylaws and detailed information on its Board and statutorily required committee members.²⁰⁴ It also provided information on its non-statutory committees, including their purposes, members, and selection processes.²⁰⁵ These additional committees are the Budget Performance Advisory Committee, Audit Committee, Compensation Committee, Songwriter Nominating Committee, and Publisher Nominating Committee.²⁰⁶

i. Board and Committees

²⁰¹ NOI at 5944.

²⁰² MLC Initial Submission Ex. 3, secs. 6.1, 6.2, 7.2 ("MLC Bylaws").

²⁰³ *MLC and DLC Contact Information, Boards of Directors, and Committees*, U.S. Copyright Office, <https://www.copyright.gov/music-modernization/mlc-dlc-info/> (last visited May 26, 2026).

²⁰⁴ MLC Initial Submission at 39–60 and Ex. 3.

²⁰⁵ *Id.* at 60–64.

²⁰⁶ *Id.*

The Office received several comments addressing the statutory composition of the MLC's voting directors, which is divided between four self-published songwriters and ten music publisher representatives.²⁰⁷ The Office appreciates these comments, but does not have the power to change the Board's statutory composition by regulation.

Other comments raised concerns about current Board and committee membership, with some suggesting that members do not adequately represent the publishing and songwriting community, especially smaller publishers and independent songwriters.²⁰⁸ The Office agrees that participation on the MLC's Board or committees is a serious responsibility and that these positions should, as a whole, represent the varied interests of the greater publishing and songwriting community. Although, other than the Songwriter Trade Group Director position (discussed below), commenters did not make specific proposals to this end, we encourage the MLC to consider ways to address concerns regarding adequate representation of stakeholder groups on its Board and committees.

ii. Bylaws Governing the Songwriter Trade Group Director

Songwriter groups specifically addressed how the MLC's bylaws implement the statutory nonvoting Board seat for "a representative of a nationally recognized nonprofit trade association whose primary mission is advocacy on behalf of songwriters in the United States"²⁰⁹ (the "Songwriter Trade Group Director"). According to the bylaws, this director is "elected by a vote of all Class A Members [*i.e.*, the Board's voting "Songwriter Directors"], with each Class A Member having one (1) vote. A tie vote shall be broken by a vote of the full Board, or if still tied after such vote, by the vote of the Chair of the Board."²¹⁰ The Songwriter Trade Group Director's term "shall continue

²⁰⁷ See BMAC & MAC Reply Comments at 2; Gwendolyn Seale Initial Comments at 8; Lindvall, Lowery, & Morgan Initial Comments at 17; SGA, SCL & MCNA Initial Comments at 4; SONA Initial Comments at 7.

²⁰⁸ See Abby North Initial Comments at 6–7; BMAC & MAC Reply Comments at 2; George Johnson Reply Comments at 12; SONA Initial Comments at 7. For example, Go to Eleven Entertainment suggested that the MLC would benefit from having members on the MLC's Nominating Committees (committees not required by the MMA) who are not on the MLC's Board, because "the [B]oard controls the makeup of new members indefinitely and they often do not pick people who would challenge [the Board's] opinions." Go to Eleven Entertainment Initial Comments at 3–4.

²⁰⁹ 17 U.S.C. 115(d)(3)(D)(i)(V).

²¹⁰ MLC Bylaws sec. 4.2(c)(1).

¹⁹⁸ MLC Initial Submission at 37.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

until a vote of the majority of the Class A Members at any Annual Meeting of Members (or by a unanimous written consent of all Class A Members delivered to the full Board) calls for election of a replacement, at which point the term of the Songwriter Trade Group Director shall expire at the next Annual Meeting of Members.”²¹¹

Since the MLC’s formation, the Songwriter Trade Group Director has been a representative from NSAI. BMAC, MAC, and SONA suggested that having varying songwriter group representatives fill the role would be beneficial for songwriters as a whole.²¹² BMAC and MAC stated that the MLC’s bylaws “make it challenging for different songwriter trade groups to be considered for this position.”²¹³ SONA echoed this claim.²¹⁴ These groups also asked for “clarification” related to the “eligibility, nominating process, term length, and term limits” for the Songwriter Trade Group Director position.²¹⁵

It is important to emphasize that neither BMAC, MAC, nor SONA criticized the current Songwriter Trade Group Director or NSAI, the Director’s trade group. In fact, SONA expressed its “gratitude for all the work that NSAI has dedicated to the position.”²¹⁶ The Office echoes the appreciation for NSAI’s work to support the MMA’s goals, including through its participation on the MLC’s Board.

The Office does, however, recommend some changes to the MLC’s bylaws governing the Songwriter Trade Group Director. We believe that the bylaws’ current provision governing the Songwriter Trade Group Director’s term is inconsistent with the statute, as the term does not have a fixed duration, but continues until the Songwriter Directors call for the election of a replacement Songwriter Trade Group Director.²¹⁷

The MMA gives the MLC the authority to establish rules governing “the *length of the term* for each member of the board of directors,”²¹⁸ and that phrase suggests a fixed duration.²¹⁹

While the rules governing the Songwriter Trade Group Director’s nomination and election provisions do not conflict with the letter of the law, as the MMA gives the MLC discretion in their implementation, the Office believes that there would be significant benefits to expanding the pool of songwriters who could nominate and elect the Songwriter Trade Group Director. Amending the bylaws to allow for greater songwriter input also would be consistent with the MMA’s legislative history, which states “that songwriters should be responsible for identifying and choosing representatives that faithfully reflect the entire songwriting community on the Board.”²²⁰

The Office encourages the MLC’s Board to make these changes as soon as reasonably practicable.

iii. Authority To Interpret the MMA or Copyright Act

Some commenters questioned the MLC’s authority to establish various policies, including those that interpret the MMA or Copyright Act. For example, Artist Rights Institute and Abby North noted their concern over “appeal rights in the policies and practices of [t]he MLC . . . that effectively make the MLC a [rulemaking] body not authorized by the Music Modernization Act.”²²¹ Attorney Gwendolyn Seale stated that “[a]dditional transparency regarding some of the MLC’s positions taken since 2021 is warranted, particularly with respect to its (1) investment policy, (2) copyright terminations policy, and (3) historical royalties distributions decisions.”²²²

Nothing in the statute gives the MLC authority to interpret the Copyright Act or MMA.²²³ Moreover, it is the Office,

with the Librarian of Congress’s approval, that has the authority to promulgate regulations to effectuate the mechanical license and the CRJs who have the authority to set the statutory mechanical license’s rates and terms, establish the administrative assessment, and promulgate regulations related to that assessment.²²⁴ At the same time, Congress granted the MLC its own specified authorities and functions, including the ability to establish its own bylaws.²²⁵ While not every decision, practice, or dispute involving the MLC requires the Office’s legal guidance,²²⁶ we have made clear that we will provide such guidance when there is a dispute over the correct interpretation of the Copyright Act or MMA.²²⁷ To the extent that stakeholders have concerns about specific MLC practices or legal interpretations, we encourage them to bring those concerns to our attention.

b. Transparency, Accountability, and Access

As Congress observed, the MLC “is expected to operate in a transparent and accountable manner” and that the MMA “specifically requires that the [MLC] shall ensure that its policies and practices are transparent and accountable.”²²⁸ The NOI asked for an explanation of how the MLC has been ensuring that “its policies, procedures, and practices are transparent and accountable” and “that all board and committee members have equal access to information in the [MLC’s] possession.”²²⁹

The MLC provided examples of how it meets this requirement. First, it noted that copies of its policies, “detailed information about its procedures and practices,” and “Annual Reports and annual IRS filings” are all available on its website.²³⁰ It also noted that it “has built and deployed numerous tools and resources to facilitate access to and

Register under this title.”); 89 FR 56586, 56610 (July 9, 2024).

²²⁴ 17 U.S.C. 801(b)(1), (b)(8); *id.* at 115(c)(1)(E)–(F), (d)(12)(A).

²²⁵ *Id.* at 115(d)(3)(C), (d)(3)(D)(ii).

²²⁶ The Office also recognizes that Congress intended that the Office’s regulations would “balance[] the need to protect the public’s interest with the need to let the new collective operate without over-regulation.” Conf. Rep. at 12.

²²⁷ The CRJs are responsible for clarifying any confusion over their own regulations. *See, e.g.*, 85 FR 22518, 22529–30 (Apr. 22, 2020) (noting, in the context of a dispute over the CRJ’s regulatory definition of “offering,” that “[t]his issue does not seem appropriate for the Office to opine on one way or the other . . . [and] concerns should be addressed to the CRJs” and on the issue of the CRJ’s late fee regulations, “any clarification should come from [the CRJs]”).

²²⁸ Conf. Rep. at 6.

²²⁹ NOI at 5944.

²³⁰ MLC Initial Submission at 69–70.

²¹¹ *Id.* sec. 4.3. The bylaws also state that “if a vacancy arises with respect to the Songwriter Trade Group Director, the Songwriter Directors shall appoint a replacement Director.” *Id.* sec. 4.4.

²¹² BMAC & MAC Reply Comments at 1–2 (“While we appreciate the intent behind this role, we believe the current implementation falls short of providing adequate representation for the diverse songwriter community.”); SONA Initial Comments at 7; *see also* SGA, SCL & MCNA Initial Comments at 4; Letter from Rep. Scott Fitzgerald to Shira Perlmutter, Register of Copyrights and Director, U.S. Copyright Office at 3–4 (Aug. 29, 2024) (noting stakeholder concerns on this topic).

²¹³ BMAC & MAC Reply Comments at 2.

²¹⁴ SONA Initial Comments at 7 (“Due to a lack of clarity, the nature of the bylaws of The MLC make it virtually impossible for any other songwriter trade group to be contemplated.”).

²¹⁵ BMAC & MAC Reply Comments at 1–2; SONA Initial Comments at 7.

²¹⁶ SONA Initial Comments at 7.

²¹⁷ MLC Bylaws sec. 4.3. The bylaws also state that “if a vacancy arises with respect to the

Songwriter Trade Group Director, the Songwriter Directors shall appoint a replacement Director.” *Id.* sec. 4.4.

²¹⁸ 17 U.S.C. 115(d)(3)(D)(ii)(I)(aa) (emphasis added).

²¹⁹ *See Term*, Black’s Law Dictionary (12th ed. 2024) (defining “term,” in part, as a “fixed period of time”).

²²⁰ Conf. Rep. at 4.

²²¹ Artist Rights Institute & Abby North Reply Comments at 1.

²²² Gwendolyn Seale Initial Comments at 8 (noting also that “the MLC should be disclosing its organizational meeting minutes to the public, so the public is aware of the rationale behind its decisions”).

²²³ *Cf.* 17 U.S.C. 702 (“The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the

usage of [t]he MLC's public data by its [m]embers and members of the public," which "provide users with significant transparency and promote accountability." ²³¹ It stated that it "provides detailed royalty statements every month to [m]embers receiving royalty payments" and "engages in diligent efforts to publicize throughout the music industry the existence of The MLC and the ability for rightsholders to register new works, claim shares in registered works, and submit proposed matches to unmatched usage, providing transparency and broad accountability on usage and ownership records." ²³²

Many commenters supported the MLC's efforts to enhance the transparency of its policies, procedures, and practices. ²³³ Some, however, requested additional transparency concerning its matching efforts. ²³⁴

²³¹ *Id.* at 70–71; *see also id.* at 12–18 (describing tools and resources).

²³² *Id.* at 71.

²³³ AGM Initial Comments at 1–2 ("The MLC has set forth for us a verifiable and exemplary track record of transparency, efficiency, professionalism, and dependability."); Big Machine Music Initial Comments at 1–2 (noting that "[t]he transparency of song information at the MLC ensures that we and our songwriters are able to keep accurate registration details of our songs, and consequently receive accurate and complete royalty payments," "the MLC's regular *Top Unmatched Sound Recordings Uses Report* gives us a new level of transparency than we have historically received, and allows us to make sure our songs don't fall through the cracks," and "has allowed U.S. mechanical streaming income to become one of the most predictable and transparent revenue sources in the music industry"); NMPA Initial Comments at 4–5; NMPA Reply Comments at 9–11; NSAI Initial Comments at 2; Peermusic Initial Comments at 2 ("On an operational level, the transparency, reliability, and accuracy of reporting [by the MLC] has been exceptional."); Recording Academy Reply Comments at 2, 4 ("[T]he MLC has provided unprecedented transparency regarding the disposition of historical unmatched royalties."); Reservoir Initial Comments at 1.

²³⁴ A2IM Initial Comments at 2–3 ("It is crucial for the MLC to provide clear statistics on fully matched, partially matched, and unmatched titles to ensure transparency and build trust among rights holders."); Abby North Initial Comments at 5; Artist Rights Alliance Reply Comments at 2 ("The MLC should increase transparency around the amount and status of matched and unmatched royalties, so that rightsholders are fully informed and included in the process."); Artist Rights Institute *Ex Parte* Letter at 3 (Aug. 22, 2025) ("There must be a formal mechanism for the U.S. Copyright Office (USCO) or a designated independent representative experienced in royalty accounting, database management and royalty compliance examinations . . . to regularly review [t]he MLC's benchmarks for matching, claiming, and distribution."); ClearRights Initial Comments at 1; George Johnson Reply Comments at 9; Music Answers Initial Comments at 1; Spirit Music Group Initial Comments at 2.

investment policy, ²³⁵ vendors, ²³⁶ and the process to nominate its Songwriter Trade Group Director. ²³⁷ Those topics are discussed in other sections of this recommendation. Commenters also sought increased transparency on various topics, including royalty holds ²³⁸ and voluntary licenses. ²³⁹ Finally, some asked for the MLC to use clearly defined terminology in its public-facing documents ²⁴⁰ and would like more information and the opportunity to provide input into its policy-making process. ²⁴¹

²³⁵ A2IM Initial Comments at 3–4; Artist Rights Institute *Ex Parte* Letter at 2, 5–8, 11–12 (Aug. 22, 2025) (calling for more transparency around governance issues, including the Investment Policy (MLC Initial Submission, Ex. 7)); BMAC & MAC Reply Comments at 2; Go to Eleven Entertainment Initial Comments at 4; Gwendolyn Seale Initial Comments at 8; SGA, SCL & MCNA Initial Comments at 10.

²³⁶ DLC & DIMA Initial Comments at 15 (stating that the MLC "declined to disclose the names of a number of the vendors that it works with, as well as its agreements with firms providing accounting, audit and legal services, without any clear explanation as to why that information is not being made publicly available" and "continues to limit [the DLC's] visibility into its contracts that are under \$500,000 in value, despite [the DLC's] requests for transparency into those not-insignificant expenditures"); Go to Eleven Entertainment Initial Comments at 2; Gwendolyn Seale Initial Comments at 7 ("In furtherance of transparency, the MLC should state whether it: (1) sets performance criteria for its vendors, (2) conducts evaluations of its vendors' performances, and if the answer to both questions are 'yes,' then it should disclose the performance criteria and results of such evaluations. . . . If the MLC is not setting performance criteria and is not conducting evaluations of its vendors, it should do so, and include the results in each annual report going forward."); SONA *Ex Parte* Letter at 2 (Aug. 18, 2024); Spirit Music Group Initial Comments at 3.

²³⁷ BMAC & MAC Reply Comments at 2. Two comments also addressed transparency of the MLC's annual report. Herman Rodriguez-Bajandas Initial Comments at 2–3; Letter from Rep. Scott Fitzgerald to Shira Perlmutter, Register of Copyrights and Dir., U.S. Copyright Office at 3–4 (Aug. 29, 2024). The annual report's requirements, however, are found in the statute and regulations. 17 U.S.C. 115(d)(3)(D)(vii); 37 CFR 210.33. Any adjustments to those requirements would come from Congress or in a separate regulatory proceeding.

²³⁸ Hameys Songs Initial Comments at 2.

²³⁹ Imbr Initial Comments at 2–3.

²⁴⁰ Gwendolyn Seale Initial Comments at 2; *see also* SGA, SCL & MCNA Initial Comments at 5–8 (stating that certain data reported by the MLC is "confusing").

²⁴¹ DLC & DIMA Initial Comments at 14 ("[T]he MLC should ensure that all stakeholders are made aware of its activities and decision-making processes."); Gwendolyn Seale Initial Comments at 2, 8 ("Additional transparency regarding some of the MLC's positions taken since 2021 is warranted, particularly with respect to its (1) investment policy, (2) copyright terminations policy, and (3) historical royalties distributions decisions. . . . I believe the MLC should be disclosing its organizational meeting minutes to the public, so the public is aware of the rationale behind its decisions."); Recording Academy Reply Comments at 5; *see also* Abby North Initial Comments at 8 ("When [t]he MLC envisions a new policy,

The Office appreciates the MLC's efforts to provide higher levels of transparency into its policies, procedures, and practices. We also appreciate that it has responded to our requests by providing additional information in meeting summaries or in its annual reports. ²⁴² The Office expects the MLC to seriously consider commenters' requests for additional transparency on the topics noted above. In particular, it should consider ways that songwriters and publishers who are not on the MLC's Board or Committees can be better informed of those groups' activities, ²⁴³ and have the opportunity to submit data or opinions relevant to policies, procedures, and practices before they are finalized. ²⁴⁴

c. Unclaimed Royalties Policy

The MMA directed the MLC's Unclaimed Royalties Oversight Committee to "establish policies and procedures for the distribution of unclaimed accrued royalties and accrued interest," in accordance with the statute. ²⁴⁵ In response to the Office's earlier request for a status update, ²⁴⁶ the MLC indicated that it had not yet adopted such policies and that it intended to do so in advance of any distribution. ²⁴⁷ As discussed above, it has now announced that it is developing a policy governing the distribution of unclaimed accrued royalties and accrued interest, with distributions expected to begin in January 2027.

The comments received provide useful context for the development of that policy. Commenters generally

members should be provided a mechanism to provide input related to this policy, prior to it being adopted.").

²⁴² *See, e.g.*, MLC *Ex Parte* Letter at 1–2, 5–6 (July 21, 2025) (providing the Office with additional requested data); MLC 2024 Annual Report at 36–37 (reflecting the Office's request for the MLC to clarify how it uses the terms "unmatched royalties" and "unclaimed royalties").

²⁴³ Unclaimed Royalties Study at v ("The MLC should be transparent about its activities and should continue to engage regularly with stakeholders. Toward this end, among other things, the MLC should make relevant material publicly available on its website, including: (1) full and complete copies of policies, practices, and procedures (e.g., those concerning holding and distributing royalties, data quality, and matching activities) accompanied by clear layperson's explanations as well as discussions of its decision-making processes. . . .").

²⁴⁴ As Congress indicated in the context of discussing the MLC's statutory committees, "[g]iven their importance, the three committees established by the collective must operate in a transparent manner to the greatest extent possible in order to avoid unnecessary litigation as well as to gain the trust of the entire music community." Conf. Rep. at 4.

²⁴⁵ 17 U.S.C. 115(d)(3)(I)(ii).

²⁴⁶ NOI at 5944.

²⁴⁷ MLC Initial Submission at 68.

supported the MLC's decision to hold unclaimed royalties beyond the minimum statutory period, so that it can improve its matching and claiming efforts.²⁴⁸ At the same time, some emphasized the importance of transparency and increased stakeholder engagement in advance of any market share distribution.²⁴⁹ For example, the Recording Academy stated, "[w]hen the time does finally come to distribute unmatched royalties, the MLC must proceed with the . . . spirit of full transparency. A detailed explanation of the proposed process for distribution should be circulated well in advance with ample opportunity for stakeholders to weigh in."²⁵⁰ Similarly, while Representative Scott Fitzgerald praised the MLC's work to identify copyright owners of historical royalties, he noted that "questions remain about whether the eventual market share based distribution serves as a disincentive to continue innovation" and "encourage[d] the Copyright Office to define clear timeframes and transparency measures in the distribution process as a condition of redesignation."²⁵¹

The Office supports the MLC's efforts to develop policies and procedures governing the distribution of unclaimed accrued royalties well in advance of the tentative January 2027 distribution. As those policies are developed, we encourage the MLC to take into account the considerations raised by commenters. Advance publication of

policies and procedures related to the distribution will provide rightsholders an opportunity to offer input. The Office looks forward to working with the MLC on this matter, and will continue to monitor its progress.

d. Other Statutory Policies, Procedures, Practices, and Guidelines

In addition to inquiries regarding the MLC's Unclaimed Royalties Policy, the NOI requested "[c]opies of all the [MLC's] policies addressing its statutory duties, procedures, practices, and guidelines," along with "the location of these policies, procedures, and practices on its website if they are currently available to the public, and a summary of changes made, if any, from earlier versions of these policies, procedures, practices, and guidelines."²⁵² The MLC's initial submission provided this information for its Conflict of Interest Policy, Musical Work Ownership Dispute Policy, Statutory Termination Policy, and Guidelines for Adjustments.²⁵³ It also provided this information for its Investment Policy Statement and Cash Management Policy Statement, which are discussed in depth below. After the Office concluded our rulemaking on "Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act,"²⁵⁴ the MLC updated its Statutory Termination Policy.²⁵⁵ In September 2024, it established its Catalog Transfer Policy, which it revised in November 2024.²⁵⁶

i. Conflict of Interest Policy

Fewer comments addressed the MLC's Musical Work Ownership Dispute Policy, Statutory Termination Policy, Catalog Transfer Policy, or Guidelines for Adjustments.²⁵⁷ The DLC and DIMA,

however, objected to the MLC's Conflict of Interest Policy, stating that the MLC "has excluded [the DLC's] statutorily designated board member from its board discussions, pursuant to [the] policy."²⁵⁸ They went on to state that "[s]uch exclusions are plainly improper, as the MMA specifically and purposefully requires a [DLC] representative to serve on [the MLC's] board of directors" and that "[e]ven as a non-voting member, that representative should, as a rule, be entitled to participate in [the MLC's] board meetings and be aware of its discussions and decisions."²⁵⁹

The MLC's Conflict of Interest Policy states that it "is intended to supplement but not replace applicable state and federal laws governing conflicts of interest."²⁶⁰ The MLC has also explained that "the policy is employed to appropriately manage actual, potential, or perceived conflicts in accordance with applicable legal requirements" and "serves its broader commitment to accountability and transparency."²⁶¹

In response to the DLC and DIMA's comments, the MLC stated that it "notified the DLC representative when there will be a discussion of . . . topics [that involve a conflict for the DLC Board Member], and the DLC representative has been recused from that portion of the meeting," but it "has not insisted on specific disclosure of every actual, potential or perceived conflict, and has not sought penalties against the DLC representative for failure to disclose all such conflicts," notwithstanding "the obviousness of the conflicts that exist for the DLC representative."²⁶² It provided the following example of where the DLC Board Member would be excluded from participating in an MLC Board meeting:

[T]he DLC representative on the Board is without question a representative of third parties who have Transactions (as that term is defined in the Conflict of Interest policy) with The MLC—including the DLC itself, which has negotiated and entered into multiple agreements with [t]he MLC concerning the administrative assessment

Initial Comments at 11 (urging the MLC to "revamp[] . . . rules governing the ability of music creators to demand proper and accurate changes to the MLC database if the copyright owner of a work refuses to respond to written correction requests within a thirty-day period").

²⁵⁸ DLC & DIMA Initial Comments at 14.

²⁵⁹ *Id.* The DLC and DIMA also opined that "the Copyright Office should issue a regulation that clearly outlines the instances (if any) in which a given member of the board, whether voting or non-voting, may be properly excluded from a board meeting." *Id.* at 29.

²⁶⁰ MLC Initial Submission Ex. 5, art. I.

²⁶¹ MLC *Ex Parte* Letter at 7 (July 21, 2025).

²⁶² MLC Reply Submission at 33–34.

²⁴⁸ See, e.g., A2IM Initial Comments at 2 ("The Copyright Office should consider conditioning MLC redesignation on further delay in the distribution of these funds . . . until the MLC fully implements improvements to the system that result from this periodic review."); BMAC & MAC Reply Comments at 3 ("We strongly believe that the distribution of unmatched royalties based on market share should not occur until significant improvements are made to the MLC's matching technology and processes."); Recording Academy Reply Comments at 4–5; SONA Initial Comments at 4.

²⁴⁹ NSAI Initial Comments at 3 ("NSAI believes that The MLC needs to prioritize creating a strategy around its eventual market distribution of historic unmatched royalties. There is a necessary sequence of events that must begin in earnest in order to appropriately fulfill the obligation of the law. . . . It will be necessary to formulate and publish a written timeline of when and how unclaimed royalties from specific periods will be distributed. Public notice of an impending distribution will be the only way to motivate owners who have not prioritized claiming their royalties."); SGA, SCL & MCNA Initial Comments at 5, 11 (requesting the establishment of certain rules governing the distribution of unclaimed royalties by market share and stating that "[e]nsuring fairness in market share-based distribution decision-making by the MLC board has thus already become a challenge of overwhelming importance that can only be met by genuine transparency . . .").

²⁵⁰ Recording Academy Reply Comments at 5.

²⁵¹ Letter from Rep. Scott Fitzgerald to Shira Perlmutter, Register of Copyrights and Director, U.S. Copyright Office at 4 (Aug. 29, 2024).

²⁵² NOI at 5944.

²⁵³ MLC Initial Submission at 64–65, 67 and Exs. 5, 6, 9.

²⁵⁴ 89 FR 56586.

²⁵⁵ See MLC *Ex Parte* Letter at 3 (July 21, 2025).

²⁵⁶ See *id.*

²⁵⁷ The Office notes, for the MLC's further consideration, several comments related to specific aspects of these policies. Gwendolyn Seale Initial Comments at 8–9 (addressing Statutory Termination Policy); Go to Eleven Entertainment Initial Comments at 4 (addressing Statutory Termination Policy); NSAI Initial Comments at 3 (addressing Statutory Termination Policy); Spirit Music Group Initial Comments at 3 ("The MLC's adjustment policy does not allow for debits and credits of rightsholders in the event of an error. Additionally, credits to the entitled rightsholder are not delivered unless the funds are received from the party paid in error. CMOs around the world have policies in place to handle adjustments and the MLC should have similar procedures in place."); Go to Eleven Entertainment Initial Comments at 5 (characterizing the MLC's current conflicts procedures as "not efficient" due in part to the lack of deadlines in the "informal reach out" stage); SGA, SCL & MCNA

. . . . When a meeting of The MLC Board is to include a discussion of whether to accept the DLC's proposed terms for the administrative assessment, the DLC representative is obviously not entitled to sit in on that discussion.²⁶³

The MLC also emphasized that “when acting in their capacity on the Board, *all* Board members of [t]he MLC have a fiduciary duty of loyalty to [t]he MLC,” including the DLC Board Member.²⁶⁴ Finally, it added that the DLC's Board Member “has not before sought to create a dispute over this practical way of handling conflicts.”²⁶⁵

At this time, the Office is not making any recommendations concerning the MLC's Conflicts of Interest Policy, to permit further discussion and potential refinement of the issues. We will continue to consider this issue and any possible recommendations, as appropriate; we also encourage the MLC and DLC to find a mutually agreeable resolution.

ii. Anti-Comingling Policy

The MMA also directs the MLC to “establish an anti-comingling policy for funds not collected under [17 U.S.C. 115] and royalties collected under [17 U.S.C. 115],”²⁶⁶ *i.e.*, a policy to avoid combining royalty funds collected under the statutory blanket license with any other funds. Those other funds could include its own operational funds (*i.e.*, funds under the administrative assessment, voluntary contributions from DMPs and SNBLs, or fees charged for services) or royalties for voluntary licenses that it administers.

While the MLC does not have a standalone anti-comingling policy, its Investment Policy Statement and its Cash Management Policy Statement (both discussed in more detail below) each include anti-commingling policies.²⁶⁷ Neither policy, however, accounts for the comingling of funds collected by the MLC when administering voluntary licenses.²⁶⁸ While the MLC does not currently administer voluntary licenses, it should adopt a standalone anti-commingling policy to account for this possibility.

5. Governance—Financial Management

a. Background

The final governance issue involves the MLC's financial management of royalties for (1) unmatched works and (2) matched works that have not yet been distributed (what the MLC calls “royalties pending distribution”). The MMA provides some direction on how the MLC should manage royalties in its possession. The statute authorizes it to “[c]ollect and distribute royalties from digital music providers,” and “[e]ngage in such other activities as may be necessary or appropriate to fulfill [its] responsibilities.”²⁶⁹ This authorization, however, is subject to “more particular requirements,”²⁷⁰ including a requirement that the MLC “deposit into an interest-bearing account” any royalties that cannot be distributed due to “an inability to identify or locate a copyright owner of a musical work (or share thereof); or . . . a pending dispute before the [D]ispute [R]esolution [C]ommittee.”²⁷¹

The statute further details the process: “Accrued royalties for unmatched works (and shares thereof) shall be maintained . . . in an interest-bearing account that earns monthly interest—(I) at the Federal, short-term rate; and (II) that accrues for the benefit of copyright owners entitled to payment of such accrued royalties.”²⁷² Once the MLC has located the owner of an unmatched work—and provided that it has not already distributed the royalties as unclaimed—it must pay the “royalties and a proportionate amount of accrued interest associated with that work (or share thereof) to the copyright owner.”²⁷³ The MMA does not contain comparable language addressing whether or how the MLC should generate or pay interest for royalties pending distribution.

In the NOI, the Office requested copies of any MLC policies addressing statutory duties, procedures, practices, and guidelines, including those governing the “collection, processing, holding, and distribution of royalties,” and “investments.”²⁷⁴ In response, the MLC provided its “Investment Policy Statement” and “Cash Management Policy Statement.”²⁷⁵

The Investment Policy Statement covers (1) “royalties for sound recording uses that have not yet been matched to an underlying musical work”; (2)

“royalties for sound recording uses that have been matched to an underlying musical work, but for shares of that work where the identity and/or sufficient payment instructions for the copyright owner are not yet known”; and (3) “royalties that have been matched, and where one or more copyright owner claims have been made, but where royalties are not yet payable, including due to ownership disputes, reviews over eligibility for payment, regulatory guidance or legal claims.”²⁷⁶ In other words, it covers royalties the MLC considers to be subject to the “Statutory Interest” requirements described above.²⁷⁷ In contrast, the Cash Management Policy Statement covers all other royalties, chiefly those pending distribution, which are held in money market or bank deposit accounts “for a relatively brief period of time, until they can be processed as part of regular monthly royalty distributions.”²⁷⁸

Regarding its Investment Policy, the MLC submitted that “the MMA effectively requires . . . an investment program.”²⁷⁹ It claimed that “[t]here is no deposit account where [t]he MLC can maintain royalty funds and earn interest at the [F]ederal short-term rate, without risk to the principal or interest.”²⁸⁰ It noted that the Federal short-term rate typically exceeds the return available from bank and money market accounts; the MMA did not create a deposit account that offers that rate; and the government has not made such an account available to the MLC.²⁸¹ Absent the ability to directly obtain the rate designated by the MMA, the MLC “developed an investment program intended to earn the necessary interest rate while keeping risk at a minimum,” with guidance from a fixed-fee financial advisor.²⁸²

The Investment Policy Statement provides the MLC with two options for holding unmatched royalty funds: “(1) exceptionally diversified, high quality, short-term, fixed income and cash equivalent strategies via short-term fixed income funds and money market funds managed by reputable and experienced institutional investment firms that have been diligently vetted and/or (2) [Federal Deposit Insurance Corporation] insured bank deposit accounts with reasonable levels of

²⁶³ *Id.* at 33 n.89.

²⁶⁴ *Id.* at 34.

²⁶⁵ *Id.*

²⁶⁶ 17 U.S.C. 115(d)(3)(D)(ix)(I)(cc); MLC 2024 Annual Report app. at 5 (noting that its Investment Policy “contain[s] an anti-commingling policy” as required by the MMA).

²⁶⁷ MLC Initial Submission Exs. 7, at 3, and 8, at 2.

²⁶⁸ *Id.* at Exs. 7, at 3, and 8, at 2.

²⁶⁹ 17 U.S.C. 115(d)(3)(C)(i)(II), (XIII).

²⁷⁰ *Id.* at 115(d)(3)(C)(i).

²⁷¹ *Id.* at 115(d)(3)(G)(III)(aa), (bb).

²⁷² *Id.* at 115(d)(3)(H)(ii).

²⁷³ *Id.* at 115(d)(3)(I)(ii).

²⁷⁴ NOI at 5944.

²⁷⁵ MLC Initial Submission Exs. 7 and 8.

²⁷⁶ *Id.* at Ex. 7, at 1.

²⁷⁷ *Id.*

²⁷⁸ *Id.* at Ex. 8, at 1, 3.

²⁷⁹ *Id.* at 66.

²⁸⁰ *Id.*

²⁸¹ *Id.*; *id.* at Ex. 7, at 3.

²⁸² *Id.* at 66.

insurance for the funds placed.”²⁸³ For royalties pending distribution, the Cash Management Policy Statement retains the same bank deposit option, but modifies the investment option to: “high-quality cash equivalent strategies via money market funds managed by reputable, experienced institutional investment firms that have been diligently vetted.”²⁸⁴ Both policies require the MLC to “regularly” meet with its financial advisors to review its strategy and monitor the performance of investments to “ensure they continue to align with [the relevant] policy.”²⁸⁵

Beyond these policy statements, the MLC provided limited information about the details of its investments. According to the MLC, it “has investments in a handful of mutual funds managed by significant and experienced institutional investment firms that our financial advisors have thoroughly vetted,” and has at times “held a small amount of funds in deposit accounts at a handful of commercial banks willing to offer very competitive interest rates.”²⁸⁶ It further stated that “[f]unds are never placed in investments that would be classified as having heightened or high risk.”²⁸⁷

Although prior versions of the policy statements detailed specific investments, the MLC withheld those statements from the public,²⁸⁸ concluding that it would be “inappropriate to disclose . . . specific recommendations in a public document.”²⁸⁹ It had “security concerns and concerns that such information could be used alongside [its] public royalty distribution timelines to engage in market timing to the detriment of [t]he MLC.”²⁹⁰ Before publicly disclosing its policy statements, it amended them to remove information about specific investments.²⁹¹

b. Commenters’ Views and the MLC’s Response

Many commenters addressed the MLC’s investment policies, and generally called for greater transparency.²⁹² Discussing the

statutory language, the Artist Rights Institute concluded, “[w]hatever Congress meant, it did not provide a broad discretionary authority to invest ‘hundreds of millions of dollars’ of other peoples’ money in the open market and then not disclose their holdings.”²⁹³ Go to Eleven Entertainment said “[i]t is our money that they are investing, and I’d like to know the details as would many other publishers”;²⁹⁴ while attorney Gwendolyn Seale commented “I do not understand why the MLC is secretive about how it is investing songwriters’ and publishers’ . . . royalties.”²⁹⁵ “[J]oin[ing] other filers,” A2IM “call[ed] for increased transparency around the MLC’s investment policies and the revenue generated from those investments” and cautioned that “when transparency fails, it breeds skepticism.”²⁹⁶

Several commenters asked for details on specific investments, with some expressing concerns over potential conflicts of interest or other possible mismanagement.²⁹⁷ Responding to the MLC’s claim that it cannot disclose such information due to security and market timing risks, multiple commenters noted that at least one major investment is (or was) already made public, albeit from public financial disclosures by the investment fund and not the MLC itself.²⁹⁸

Commenters also sought greater transparency on the MLC’s policies beyond the policy statements. Many asked some variant of: “what happens

when profits are made or, more importantly, when losses are incurred,”²⁹⁹ or when and how will investment revenues be distributed to rightsholders?³⁰⁰ Some questioned how investments would be transferred in the event the MLC were not redesignated, with the Artist Rights Institute asking “[i]n whose name are the securities held?”³⁰¹

Separate from these transparency issues, the Artist Rights Institute also suggested that the MLC may lack the statutory authority to invest royalty funds at all.³⁰² It claimed that had Congress intended the MLC to invest funds, it “would have taken more care to specify which bank, what kind of bank, what happens to shortfalls or windfalls, and so on.”³⁰³ Instead, the Artist Rights Institute suggested the statutory interest should function as a penalty “similar[] to the royalty late fee,” which could be paid out of the administrative assessment.³⁰⁴

Conversely, the DLC and DIMA observed that collective management organizations “often generate interest or other investment income on the funds they collect. Typically, interest is used to either offset administrative costs of the organization or is added to the total pool of funds to be distributed.”³⁰⁵ While recognizing that the MMA is explicit about the disposition of interest on royalties for unmatched and disputed works, they argued that it is “silent as to all of the other categories of interest or other investment income,” including that “earned as part of the ordinary churn of royalties.”³⁰⁶ They suggested that this income could be

Christian L. Castle Reply Comments at 2 n.3; Gwendolyn Seale Initial Comments at 8; Go to Eleven Initial Comments at 4; George Johnson Initial Comments at 28–29; George Johnson Reply Comments at 8; Hameys Songs Initial Comments at 2.

²⁹³ Artist Rights Institute Initial Comments at 5.

²⁹⁴ Go To Eleven Entertainment Initial Comments at 4.

²⁹⁵ Gwendolyn Seale Initial Comments at 8.

²⁹⁶ A2IM Initial Comments at 3–4; *see also* the SGA, SCL & MCNA Initial Comments at 10 (“[W]e remain highly disappointed by the apparent lack of authority or ability of such administrators to provide us with straightforward details concerning issues [such as] investment of held royalties”); BMAC & MAC Reply Comments at 2 (commenting that there “lacks transparency to songwriters and artists regarding how this investment fund will impact them”).

²⁹⁷ *See, e.g.*, Artist Rights Institute Initial Comments at 5–8 (“Does [t]he MLC[] hold any shares of its board members companies or any licensees? If so, how many share in which ones?”); A2IM Initial Comments at 3–4 (“The MLC must disclose how they invest funds [and] the revenue generated”); George Johnson Initial Comments at 28 (“Where is the black-box money invested is another question and *how much* have they made off their *secret investments*?”).

²⁹⁸ *See* Gwendolyn Seale Initial Comments at 8; Artist Rights Institute Initial Comments at 6–7; George Johnson Initial Comments at 28–29; George Johnson Reply Comments at 8 n.16; Christian L. Castle Reply Comments at 2 n.3.

²⁹⁹ Gwendolyn Seale Initial Comments at 8 (emphasis omitted); *see also* Artist Rights Institute Initial Comments at 7 (“If Congress authorized this investment program, who bears the losses and who earns the profit on those investments?”).

³⁰⁰ *See* A2IM Initial Comments at 3–4 (“The MLC must disclose . . . how they will disburse those revenues to rightsholders.”); BMAC & MAC Reply Comments at 2 (“[T]here exists uncertainty surrounding . . . investment fund losses or distribution impact on payments of unmatched royalties”); Artist Rights Institute Initial Comments at 7 (“Have there been any distributions of trading profits from the investment corpus? If so, to whom were these distributions made?”).

³⁰¹ Artist Rights Institute Initial Comments at 7; *see also* BMAC & MAC Reply Comments at 2 (noting uncertainty surrounding “policies for transfer or ownership of the securities if the MLC in [sic] not redesignated.”).

³⁰² *See* Artist Rights Institute Initial Comments at 2–5, 7; *see also* Gwendolyn Seale Initial Comments at 8 (“It must be said that there is no specific language in the MMA which directs the MLC to invest the historical royalties in its possession.”).

³⁰³ Artist Rights Institute Initial Comments at 3.

³⁰⁴ *Id.*

³⁰⁵ DLC & DIMA Initial Comments at 26.

³⁰⁶ *Id.* at 27.

²⁸³ *Id.* at Ex. 7, at 3.

²⁸⁴ *Id.* at Ex. 8, at 3.

²⁸⁵ *Id.* at Exs. 7, at 4, and 8, at 3.

²⁸⁶ *Id.* at 66.

²⁸⁷ *Id.*

²⁸⁸ The Office also has not been provided with copies of those statements.

²⁸⁹ MLC Initial Submission at 67.

²⁹⁰ *Id.* at 67 n.93.

²⁹¹ *Id.* at 67.

²⁹² *See* Artist Rights Institute Initial Comments at 2–8; A2IM Initial Comments at 3–4; BMAC & MAC Reply Comments at 2; SGA, SCL & MCNA Initial Comments at 10; DLC and DIMA Initial Comments at 26–28; DLC & DIMA Reply Comments at 9–10;

significant and should be used to offset the MLC's administrative costs.³⁰⁷

In its reply comments, the MLC acknowledged that commenters had raised questions about its investment policy, and responded by citing to its Initial Submission and policies, saying they provided “an extensive explanation of why [t]he MLC is effectively required by the MMA to have an investment program and how it works.”³⁰⁸ It also reiterated that it “does not publicize the details of specific investments, which involve security and market manipulation concerns.”³⁰⁹

The MLC and others further discussed these issues at a series of *ex parte* meetings with the Office.³¹⁰ Initially, the MLC emphasized its commitment to minimizing risks and preserving funds, quoted policy provisions related to the independence of investment decisions, and noted that it interprets “Federal short-term rate” as the rate proscribed in 26 U.S.C. 1274(d).³¹¹ At the final *ex parte* meeting, it provided details on several operational issues.³¹²

On the composition of its investment portfolio, the MLC explained that “consistent with best practices among nonprofit organizations managing similar funds . . . , it has retained expert, fee-based financial advisors to provide specialized guidance.”³¹³ According to the MLC, it has been advised “that an investment strategy composed exclusively of purchasing U.S. Treasury securities would be highly unlikely to meet the Statutory Interest Rate over time.”³¹⁴ This is “due to several factors, including that the target benchmark reflects current market yields while any portfolio holds securities purchased at prior yields, causing systematic underperformance during periods of rising rates; there is no guarantee that offsetting rate movements would occur during the MLC's investment horizon; . . . ongoing distribution obligations require liquidations even during unfavorable conditions; and fund returns are net of fund expenses and so will systematically lag the yield of any underlying bundle of treasuries.”³¹⁵

Accordingly, the MLC pursues a strategy designed by their advisors to generate sufficient returns “while prudently managing risk and maintaining adequate liquidity.”³¹⁶

On investment expenses and costs, the MLC explained that “fees paid to its fee-based advisors are covered by assessment funds” but that “mutual fund expense ratios are not investment fees paid by [t]he MLC” and “are part of a fund's net asset value, with no distinct investment fee payable by fund investors.”³¹⁷ When asked whether it could structure its investments such that management fees are paid out of the administrative assessment, it responded that it was “not aware of any such foreclosure by [Generally Accepted Accounting Principles], but [t]he MLC chose to pursue the strategy that its fee-based advisors recommended.”³¹⁸

On potential investment gains and losses, the MLC stated that it holds investment returns that exceed the Federal short-term rate, and the cash management interest on royalties pending distribution, to “ensure that it can meet its statutory obligation to pay interest on unmatched royalties.”³¹⁹ The MLC described these funds as “reserves,” claiming that it “has not identified any excess funds beyond reasonable reserves for its statutorily mandated interest obligations in the future.”³²⁰ As to a potential distribution of excess reserves, it stated it “has not created any policies for distribution or liquidation of royalty funds beyond the distribution provisions set forth in the MMA.”³²¹

Finally, the MLC discussed whether its royalty investments would be protected from non-royalty creditors in the event of insolvency.³²² It “stressed that it has no basis to expect any such situation to occur, and reiterated comments shared with Congress.”³²³ It said it “would have to address the matter based upon the specific details at hand,” and it is its “intention and expectation that there will never be a shortfall.”³²⁴ It also stated that “royalty funds in its custody are subject to statutory safeguards under the MMA.”³²⁵

c. Analysis

As discussed above, the MMA requires the MLC to “deposit” certain royalty funds into “an interest-bearing account” that “earns monthly interest . . . at the Federal, short-term rate.”³²⁶ Interest “accrues for the benefit of copyright owners entitled to payment of . . . accrued royalties,”³²⁷ and the MLC must pay out a “proportionate” amount or share when making a distribution.³²⁸ Interpreting this language presents several challenges.

i. The Federal Short-Term Rate

The phrase “Federal, short-term rate” is not defined or cross-referenced in the Copyright Act or MMA. Beyond title 17, the phrase does appear in the Internal Revenue Code at sections 1274(d)(1)(C)(i) and 6621(b)(3); however, these sections supply different definitions for different purposes. Section 1274 describes the process for determining an imputed principal amount for certain debt instruments that lack “adequate stated interest.”³²⁹ It defines “[f]or purposes of this section” a short-term rate that is “based on the average market yield . . . on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.”³³⁰ In contrast, section 6621 describes the process for determining interest rates corresponding to the underpayment and overpayment of tax.³³¹ It defines, “[f]or purposes of this section,” a short-term rate that is calculated “in accordance with section 1274(d),” except it is rounded to the nearest full percentage.³³²

The MLC takes the position that the section 1274 Federal short-term rate is the rate contemplated by the MMA.³³³ The following factors support this position. First, the MMA is explicit that interest is earned “monthly,” and revenue rulings from the Treasury Department under section 1274 provide the short-term rate calculated for different compounding periods, including monthly, whereas rulings under section 6621 are based on daily compounding.³³⁴ Second, the short-term rate defined in section 6621 is based on

³⁰⁷ *Id.*

³⁰⁸ MLC Reply Submission at 22.

³⁰⁹ *Id.*

³¹⁰ See MLC *Ex Parte* Letter at 6–7 (July 21, 2025); MLC *Ex Parte* Letter at 6–7 (Dec. 10, 2025); Artist Rights Institute *Ex Parte* Letter at 6–10 (Aug. 22, 2025); DLC *Ex Parte* Letter Ex. 1 (Sept. 22, 2025).

³¹¹ MLC *Ex Parte* Letter at 6–7 and 6 n.11 (July 21, 2025).

³¹² MLC *Ex Parte* Letter at 6–7 (Dec. 10, 2025).

³¹³ *Id.* at 6.

³¹⁴ *Id.* (footnote omitted).

³¹⁵ *Id.* at 6 n.13.

³¹⁶ *Id.* at 6.

³¹⁷ *Id.* at 6–7.

³¹⁸ *Id.* at 7.

³¹⁹ *Id.* at 6 n.14.

³²⁰ *Id.* Although the MLC did not disclose the amount of its reserves, it stated that it had “approximately \$153.7 million in interest income” at the end of October 2025. *Id.*

³²¹ *Id.*

³²² *Id.* at 7.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.* (citing 17 U.S.C. 115(d)(3)(D)(ix)(I)(cc), (d)(3)(G)(ii), (d)(3)(H)(ii), (d)(11)(D)).

³²⁶ 17 U.S.C. 115(d)(3)(G)(i)(III).

³²⁷ *Id.* at 115(d)(3)(H)(ii).

³²⁸ *Id.* at 115(d)(3)(I)(ii), (I)(i).

³²⁹ See 26 U.S.C. 1274(a).

³³⁰ *Id.* at 1274(d)(1)(C)(i).

³³¹ See *id.* at 6621(a).

³³² *Id.* at 6621(b)(3).

³³³ MLC *Ex Parte* Letter at 6 n.11 (July 21, 2025).

³³⁴ Compare Rev. Rul. 2025–14, <https://www.irs.gov/pub/irs-drop/rr-25-14.pdf> (last visited May 26, 2026), with Rev. Rul. 2024–25, <https://www.irs.gov/pub/irs-drop/rr-24-25.pdf> (last visited May 26, 2026).

the rate defined under section 1274. In the absence of an explicit cross-reference to section 6621—something Congress has done in other statutes—it is reasonable to infer that the base rate was intended. Third, the short-term rate in section 6621 is rarely cross-referenced directly. Instead, the Internal Revenue Code uses it to define separate overpayment and underpayment rates, and it is those rates that are most frequently cited by other statutes.³³⁵

ii. Achieving the Statutory Rate

Assuming section 1274 applies, the statute is not clear as to *how* the MLC should achieve that rate. The MLC takes the position that the MMA directs it to maintain an internal account or ledger for unmatched and disputed royalties, and to calculate interest owed pursuant to the Federal short-term rate, but that the statute does not govern how it must fund the interest obligations.³³⁶ It claims that in the absence of deposit accounts that offer the Federal short-term rate, the statute “effectively” requires an investment program that obtains a return that “matches or exceeds [the] required amount.”³³⁷ The problem with this “ledger” approach is the plain language of the statute, which directs the MLC to “deposit” funds “into” an “interest-bearing account” that “earns monthly interest.” The ledger interpretation would seem to render several of these statutory terms meaningless.³³⁸

The Office has no reason to doubt the MLC’s assertion that there is no standard financial product that would allow it to consistently earn monthly interest at exactly the Federal short-term rate. The section 1274 rate is based on the average market yield on government debt instruments, mainly U.S. Treasuries, with remaining maturity periods up to three years, and is calculated based on the preceding month.³³⁹ This rate will often exceed

rates available from traditional bank accounts and money market funds because the underlying securities are subject to greater duration risk.³⁴⁰

The MLC must place royalty funds *somewhere*. Even if it used traditional deposit accounts, such accounts are not entirely risk-free, especially as they are not insured at the scale of the MLC’s holdings.³⁴¹ And Congress directed the MLC to earn interest “at” the Federal short-term rate—not above or below it. While exceeding the short-term rate could lead to greater interest payments or an accumulated “reserve,” it also means greater risk exposure. If the MLC cannot obtain the short-term rate in a deposit account directly, one reasonable response would be to invest in assets that mirror the risk and return of the short-term rate, *i.e.*, a blend of U.S. Treasuries with remaining maturities up to three years.³⁴² Whether it has done so, and how, presents a different set of questions.

Initially, it is difficult to fully assess the MLC’s investment practices because its policies were adopted without public debate and with limited public disclosure. The MLC has not publicly disclosed its financial advisor, the fund(s) it invests in, the portfolio(s) held

States with remaining periods to maturity of 3 years or less.” 26 U.S.C. 1274(d)(1)(C)(i); *see also About Treasury Marketable Securities*, TreasuryDirect, <https://www.treasurydirect.gov/marketable-securities/> (last visited May 26, 2026).

³⁴⁰ Cf. 17 CFR 270.2a–7(d)(1) (limiting the average maturity of investments held by money market funds). At times, including in recent years, some deposit accounts have offered rates that exceeded the Federal short-term rate. This can happen when the treasury yield curve is inverted, *i.e.*, when one-month treasuries offer a higher yield than three-year treasuries. Cf. *10-Year Treasury Constant Maturity Minus 3-Month Treasury Constant Maturity*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/T10Y3M> (last visited May 26, 2026) (charting the historical spread between 10-year and 3-month Treasury yields). But when the yield curve has a positive slope—as is often the case, including when the MLC began administering the blanket license—the Federal short-term rate will likely exceed rates available from deposit accounts. This means the MLC cannot *reliably* achieve the short-term rate from a traditional deposit account.

³⁴¹ Subject to more specific provisions and adjustments, the Federal Deposit Insurance Corporation’s “standard maximum deposit insurance amount” is \$250,000. *See* 12 U.S.C. 1821(a)(1)(E). Depositors may be able to obtain greater coverage in certain circumstances, but those methods do not appear to be a practical solution for the MLC.

³⁴² This would be somewhat analogous to the Copyright Office’s investment of cable, satellite, and digital audio recording devices or media royalty fees in “interest-bearing United States securities”. *See, e.g.*, 17 U.S.C. 111(d)(2) (“The Register of Copyrights shall . . . deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest . . .”); *id.* at 119(b)(3) (same); *id.* at 1005 (same).

by the fund(s), the amount(s) invested, or its policy for gains or losses. Likewise, it has not identified the amount of interest earned on royalties pending distribution under its cash management practices, or a written policy on the distribution or use of this interest. However, based on the information that is available, the Office has several concerns.

The MLC claims that disclosing specific investments would pose security and market timing risks.³⁴³ Yet, it appears that the identity of a major investment has already been publicly disclosed via routine Securities and Exchange Commission filings, and the MLC has not responded or updated its practices. If there are substantial security and market timing risks from that disclosure, it should take steps to address them. If there are not, it should not cite them as a reason for withholding information.

To the extent there are market timing risks, they would also seem to arise from the MLC’s decision to invest beyond U.S. Treasuries. The treasury market is a multi-trillion-dollar market with high liquidity and massive trading volumes. It is unlikely that the MLC could influence such a market. Further, investing solely in U.S. Treasuries would have a separate advantage—they are government-backed assets that are relatively uncontroversial. While the Office has no reason to question the propriety of the MLC’s investments, and it certainly appears that the underlying fund(s) hold relatively standard and diversified fixed income securities, the decision to go beyond U.S. Treasuries and the accompanying lack of transparency has fostered suspicion among some stakeholders³⁴⁴ and may be inconsistent with Congressional intent in choosing an interest rate explicitly tied to marketable U.S. government debt.

The MLC asserts that it cannot limit investments to U.S. Treasuries or funds that mirror the treasuries used to calculate the short-term rate.³⁴⁵ It points to guidance from financial advisors that such a strategy would be “highly unlikely” to meet the short-term rate over time.³⁴⁶ Specifically, it claims that the short-term rate reflects “current market yields,” and therefore a portfolio of treasuries purchased at prior yields

³³⁵ *See, e.g.*, 30 U.S.C. 1721. *But see* Public Law 113–291, 3021(c)(2) (Dec. 19, 2014) (amending prior version of section 1721 to refer to the “Federal short-term rate determined under section 6621(b)”).

³³⁶ *See* MLC Initial Comments at 66 and Ex. 7, at 3; MLC Reply Comments at 22; MLC *Ex Parte* Letter at 6 (July 21, 2025); MLC *Ex Parte* Letter at 6 (Nov. 20, 2025).

³³⁷ MLC Initial Comments at 69, 191.

³³⁸ The Office also rejects the Artist Rights Institute’s claim that the MLC should do nothing with royalty funds at all and pay the interest out of the administrative assessment as some form of penalty. There is no indication that Congress intended this approach.

³³⁹ The rate is calculated each calendar month, for the “following calendar month,” based on “the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United

³⁴³ *See, e.g.*, MLC Initial Submission at 67 n.93; MLC Reply Submission at 22.

³⁴⁴ For example, some commenters questioned whether the MLC invests within the music industry or in some other improper manner. *See, e.g.*, Artist Rights Institute Initial Comments at 5, 7–8; George Johnson Initial Comments at 28.

³⁴⁵ MLC *Ex Parte* Letter at 6 (Nov. 20, 2025).

³⁴⁶ *Id.* at 6 n.13.

would underperform “during periods of rising rates.”³⁴⁷ This underperformance might not be corrected during the “MLC’s investment horizon” and its distribution obligations could require liquidation during unfavorable conditions.³⁴⁸ Finally, since investment funds provide returns net of expenses, they would systematically lag the yield of underlying treasuries.³⁴⁹

The MLC is correct on the first two points: U.S. Treasuries have interest rate risk, lose value when rates rise, and might not generate sufficient funds to cover the short-term rate during a period of rising interest rates.³⁵⁰ The problem is that this is also true of fixed income funds with broader portfolios, which are subject to interest rate *and* greater credit risks.³⁵¹ Conversely, both generally perform well during periods of falling rates. In either instance, the MLC could be forced to liquidate funds at a loss or gain; and this does not explain why a rolling treasury portfolio would not more closely mirror the risk and return of the treasuries underlying the short-term rate.

The MLC’s third point, however, does explain why treasuries might be infeasible. Investment funds generally charge a fraction of a percent of the investment in annual management fees and other expenses, and as the MLC notes, their returns are “net” these expenses.³⁵² Accordingly, the return on a treasury-based fund similar in composition to the treasuries used to calculate the short-term rate would inevitably lag the rate due to expenses—unless those expenses were paid separately.

iii. Investments and Administrative Costs

The Office questioned the MLC on how its investment expenses relate to the MMA’s provisions on administrative costs. The MMA provides that “collective total costs” shall be funded by the administrative assessment and voluntary contributions from DMPs and

significant nonblanket licensees,³⁵³ and defines those costs as “the total costs of establishing, maintaining, and operating the mechanical licensing collective to fulfill its statutory functions,” including “costs of . . . royalty administration.”³⁵⁴ The MLC responded that its financial advisor fees are paid out of the assessment funds “consistent with the treatment of other administrative costs,” but “that mutual fund expense ratios are not investment fees paid by [t]he MLC,” and there is “no distinct investment fee payable by fund investors.”³⁵⁵ When asked whether it could structure its investments so that expenses were paid out of the administrative assessment, the MLC did not identify any specific barriers but said that it pursued a strategy recommended by its financial advisors.³⁵⁶

iv. Gains, Losses, and Reserves

An important consequence of the MLC’s current practice of investing in relatively higher-risk, higher-return investments, is the potential for gains that exceed statutory interest obligations. Further, under its cash management practices, the MLC earns interest on royalties pending distribution with no corresponding statutory obligation. The MLC indicated that it holds excess investment returns and the cash management interest as “reserves” against future interest obligations, *i.e.*, to make up for potential future investment losses. While it did not directly quantify the size of these reserves, it reported over \$153 million in “interest income” as of the end of October 2025.³⁵⁷

The MLC’s interest reserve practices are not addressed in its policy statements and raise important legal and policy questions. It is unclear whether the MLC’s ledger interpretation and reserve practices align with the MMA’s direction that royalty payments include a “proportionate” amount or share of the accrued interest, at least for interest from invested unmatched royalty funds.³⁵⁸ Further, as the MMA does not require royalties pending distribution to accrue interest, it is unclear why interest earned by those matched

royalties should be used as a reserve for underperforming unmatched royalty funds. It has also not explained whether its current reserves, supplemented by the ongoing cash management interest from royalties pending distribution, are consistent with its claims regarding the infeasibility of investing in U.S. Treasuries. The MLC has not articulated any policies for managing the size of the reserves or distributing excess reserves. Nor has it articulated any policies that address the converse possibility that these investments could result in sustained extended losses and exhaust its reserves.³⁵⁹

The potential for investment shortfalls raises important questions, including whether a shortfall for one period would be shared across usage periods or between the historic and blanket royalties, and whether investments would be protected from non-royalty creditors in the event of insolvency. While the MLC points to “statutory safeguards under the MMA,”³⁶⁰ the Office believes the MLC and stakeholders would benefit from further articulation of how these safeguards function, the degree of protection afforded, how the MLC intends to respond to potential overages or shortfalls, and any additional legal mechanisms available or used to protect royalty funds.

v. Conclusion Regarding Financial Management

The purpose of this proceeding is to address whether the MLC continues to meet the statute’s designation criteria, and not to address issues with the MMA itself. Unfortunately, the MMA was not clear as to how the MLC should earn interest on royalties for unmatched works at the Federal short-term rate. This omission, in combination with the requirements the Act imposes, places the MLC in a difficult position regarding the management of an important administrative function. The Office believes the MLC and the greater music community would benefit from additional Congressional direction in this area.³⁶¹

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ However, contrary to the MLC’s claim, the Federal short-term rate does not reflect “current market yields”; it is calculated based on a preceding month. *Cf.* 26 U.S.C. 1274(b) and (c)(1).

³⁵¹ For example, following a year of rising interest rates, the MLC had over \$6 million in net unrealized losses on investments at the end of 2022. *See The MLC’s Form 990 for 2022*, MLC (2022), <https://www.themlc.com/hubfs/990-2022-Combined.pdf>; *Federal Funds Effective Rate*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/fedfunds> (showing an increase in the federal funds effective rate from 0.08% in January 2022 to 4.10% in December 2022).

³⁵² MLC *Ex Parte* Letter at 6 n.13 (Nov. 20, 2025).

³⁵³ *See* 17 U.S.C. 115(d)(7)(A).

³⁵⁴ *Id.* at 115(e)(6)(A)(v).

³⁵⁵ MLC *Ex Parte* Letter at 6–7 (Nov. 20, 2025).

³⁵⁶ *Id.* at 7.

³⁵⁷ *Id.* at 6 n.14. According to the MLC’s annual report from 2024, by March 2025 it had accrued approximately \$41 million in interest on royalties held but not distributed related to usage from 2021–2024, \$25 million in interest on historical unmatched royalties, and \$11 million in Phono III adjustment royalties. *See* MLC (2024) Annual Report app. at 48–52.

³⁵⁸ 17 U.S.C. 115(d)(3)(i)(ii), (d)(3)(j)(i).

³⁵⁹ When asked about these scenarios, the MLC responded, “it is our intention and expectation that there will never be a shortfall,” and that in the event a hypothetical shortfall came to pass, they “would have to address the matter based upon the specific details at hand.” MLC *Ex Parte* Letter at 7 (Nov. 20, 2025) (quoting Resps. to Questions for the Record, *Five Years Later—The Music Modernization Act: Hearing Before the Subcomm. on Courts, Intellectual Prop., and the Internet, of the H. Comm. on the Judiciary*, 118th Cong. (2023) (Kris Ahrend, CEO, the Mechanical Licensing Collective)).

³⁶⁰ *Id.* at 7 and n.16.

³⁶¹ The Office notes that under the MMA, the MLC is prohibited from engaging in government

Absent that direction, the MLC has articulated one potential interpretation of the statute, and the available information suggests it has adopted a relatively routine and low-risk investment strategy to implement that interpretation. This was a rational response to a difficult situation and is not a reason to withhold the designation. Nonetheless, it is not clear that the MLC's ledger-based approach is consistent with Congressional intent and, even assuming it is, there appears to be room for improvement in its execution. While the Office appreciates the MLC's deference to financial advisors, we encourage it to work with those advisors to reevaluate (1) the viability of a treasury-based portfolio, taking into consideration the size of its current reserves and the ongoing interest earned on royalties pending distribution; (2) the potential for reallocating investment management fees to the administrative assessment; and (3) any market timing risks associated with its current investments.

The Office also notes that the MMA directs the MLC to "ensure that the policies and practices of the collective are transparent and accountable."³⁶² This creates heightened expectations for transparency and oversight regarding its handling of large sums of money on behalf of others, even where the MLC may be following common industry practices. Unfortunately, the MLC has not provided stakeholders with a meaningful opportunity to review and comment on these issues. For example, it has repeatedly deferred to the advice of financial advisors, but it has not conveyed that advice at a sufficient level of detail for interested parties to assess its quality or the MLC's actions thereon. Further, regardless of whether the MLC changes its investment strategy based on the reevaluation discussed above, it should at least revise its public policy statements to fully articulate its reserve practices, including the extent to which they comingle royalties across usage periods (and any statutory authority for doing so), and formulate meaningful contingency plans for sustained investment losses or gains.

6. Education and Outreach

Under the MMA, the MLC must "engage in diligent, good-faith efforts to publicize, throughout the music industry . . . the existence of the collective and the ability to claim unclaimed accrued royalties for

unmatched musical works (and shares of such works) held by the collective" and "the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties."³⁶³ The MLC is further required to "participate in music industry conferences and events for the purpose of publicizing the [aforementioned] matters," as appropriate.³⁶⁴ In the Register's initial designation, we stated that its education and outreach efforts "should include clear benchmarks that measure [the MLC's] outreach effectiveness so that it can modify and adapt its strategies and tactics to best serve the entire songwriter community."³⁶⁵

In the NOI, the Office asked about the MLC's education and outreach efforts, "including how the MLC reaches a variety of audiences to engage in diligent, good-faith efforts to publicize the collective and ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works)."³⁶⁶ Referencing the *Unclaimed Royalties Report* recommendations, we also asked how the MLC "tailor[s] its education and outreach activities in recognition of the industry's broad and diverse spectrum of songwriters and copyright owners, including by stakeholders' varying levels of sophistication, geographic location, age, and music genre," and how it "employ[s] dedicated, persistent outreach to historically underserved groups."³⁶⁷ Finally, we asked how it is using "member demographic statistics and DMP usage analytics . . . to better target its education and outreach efforts towards under-participating groups."³⁶⁸

In response, the MLC first highlighted its implementation of the outreach-specific recommendations from the *Unclaimed Royalties Report*. As of the date of its initial submission, the MLC reported that it has conducted or participated in over 5,000 different outreach activities. Of those activities, (1) 1.6% addressed the recommendation to target historically underserved groups, (2) 8% addressed the recommendation to "focus efforts on educating the community about what it does, its processes, the complex nature of the statutory license, and the significance of registering with the

MLC,"³⁶⁹ (3) 3% addressed the recommendation to "advertise to the broadest extent reasonably practicable, including through official journals and other broad-reaching publications (*i.e.*, not just music industry publications), social media campaigns, national newspapers, television, multi-state unclaimed property sites, direct mailings, and public events,"³⁷⁰ (4) 20% addressed the recommendation to "publicize throughout the music industry the existence of the MMA, the MLC, the Blanket License, and the public musical works database, the ability to claim ownership of unmatched works (and shares), and the procedures by which copyright owners may identify themselves and provide relevant information to the MLC,"³⁷¹ and (5) 6.4% addressed the recommendation to conduct outreach efforts in partnership with "individual creators, foreign CMOs, [performing rights organizations], the DLC, DMPs, distributors and aggregators, music education programs, and local government arts or cultural organizations."³⁷²

Next, the MLC described its communications strategy, which involves "in-person events, webinars and virtual events, print and digital advertisements, video content, newsletters, interviews for articles and podcasts, social media, and strategic partnerships" with educational institutions, international organizations, distributors, aggregators, and third-party companies operating in the music and technology sectors.³⁷³ The MLC stated that it employs this strategy to reach a variety of audiences, differentiated by level of sophistication, geographic location, age, music genre, and community.

Finally, the MLC addressed its use of data "to assess the impact of various marketing activities, including in-person events, webinars and advertising campaigns" and decide where to allocate time and funding.³⁷⁴ It stated that it "tracks various digital performance metrics, including potential reach (*i.e.*, the estimated number of potential Members that will see the advertisement), impressions (*i.e.*, the number of potential Members that actually see the advertisement), and clicks (*i.e.*, the number of potential

³⁶³ *Id.* at 115(d)(3)(j)(iii)(II)(aa)–(bb).

³⁶⁴ *Id.* at 115(d)(3)(j)(iii)(III).

³⁶⁵ Initial Designation at 32292 (internal quotations omitted).

³⁶⁶ S. Rep. No. 115–339, at 14 (2018).

³⁶⁷ *Unclaimed Royalties Report* at 29.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 37.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ MLC Initial Submission at 79.

³⁷⁴ *Id.* at 103.

lobbying activities and therefore could not raise this issue with Congress directly. See 17 U.S.C. 115(d)(3)(C)(iv).

³⁶² *Id.* at 115(d)(3)(D)(ix)(I)(aa).

members that click on the advertisement).³⁷⁵

In addition to tracking engagement, the MLC uses member demographic and DMP usage analytics to target education efforts. As an example of how it uses member demographics, it noted it “analyzes [m]ember zip codes to gain valuable insight into the regional concentrations of rightsholders and to help target event outreach accordingly.”³⁷⁶ Likewise, it “analyzes statistics pertaining to its [m]embers’ varying levels of activity and engagement,” and “segments its [m]embers according to these engagement patterns . . . [to] tailor[] its email marketing campaigns to each segment so that the messaging is relevant and targeted, fostering continuous interaction and involvement.”³⁷⁷

The MLC also reported that it “analyzes [DMP] usage reporting to help target outreach to members in multiple ways.”³⁷⁸ It highlighted two initiatives that demonstrate this effort: the DURP program, offering metadata in DMP usage reporting “to provide enrolled independent sound recording distributors with a targeted view of the public works database that can be used by them to direct outreach and education to rightsholders who potentially have unregistered works,”³⁷⁹ and the Missing Member initiative, which “analyzes sound recording artist metadata in [DMP] usage reporting to try to identify rightsholders who have not yet registered with [t]he MLC in connection with their works.”³⁸⁰

Generally, commenters praised the MLC’s efforts, noting that its staff provides a “high level of service and support to assist and educate its members.”³⁸¹ They were particularly impressed with its work to educate self-published or “DIY” songwriters,³⁸² and

to curate webinars and workshops covering relevant topics for this audience.³⁸³ Peermusic also expressed appreciation for the MLC’s “proactive[]” outreach to “elicit feedback, hear . . . concerns, and address specific issues.”³⁸⁴

Other commenters offered suggestions for improvement. BMAC and MAC called for the MLC to expand its outreach initiatives to include “[i]nteractive and hands-on educational programs within genre specific communities with complex publishing histories such as rap, R&B, and Latin music genres could further empower songwriters to navigate the MLC’s systems effectively ensuring proper matching more accurate distributions.”³⁸⁵ SONA encouraged the MLC to improve outreach to published songwriters.³⁸⁶

It is clear that the MLC has prioritized education and outreach efforts. In particular, it has excelled in producing written materials, videos, tutorials, webinars, and other web content that is educational and accessible to songwriters across multiple sophistication levels, and has participated in many music industry conferences and other events. It has effectively partnered with other organizations to develop content and produce events that allow creators and songwriters to directly engage with MLC representatives. It has also “partner[ed] with influencers and creators on social media,” including established and up-and-coming songwriters,³⁸⁷ consistent with the suggestion in the *Unclaimed Royalties Report*.³⁸⁸

The Office acknowledges the challenges associated with quantifying the effectiveness of education and outreach activities. While the MLC

their mission to outreach and educate very seriously and have strategically positioned themselves in any and all places where a self-published songwriter might take notice”).

³⁸³ Dennis Llewellyn Day Reply Comment (“To its credit MLC offers numerous webinars and workshops available to its members, most cover relevant topics around program operations”); Go to Eleven Entertainment Initial Comments at 2 (“They have lots of webinars and are really trying to reach DIY songwriters in multiple ways and locations”); see also Big Machine Music Initial Comment (“From monthly memos updating information regarding tools and services to webinars for staffers of all levels of administration sophistication, we have felt the MLC’s emphasis on outreach”).

³⁸⁴ Peermusic Initial Comments at 2.

³⁸⁵ BMAC & MAC Reply Comments at 3.

³⁸⁶ SONA Initial Comments at 8.

³⁸⁷ MLC Initial Submission at 84.

³⁸⁸ *Unclaimed Royalties Report* at 34 (“Various parties suggested partnering with individuals, such as peers, celebrities, industry ‘ambassadors,’ or other admired creators who are more likely to gain songwriters’ attention and may therefore help with educational outreach.”).

tracks reach, impressions, and clicks, the ultimate performance metrics would be the number of members the MLC gained, the works claimed and matched, and the reduction of unclaimed royalties. Changes in these metrics which result from different education and outreach activities are hard to measure, as they may occur far after an outreach event or after repeated educational activities. Nevertheless, we encourage the MLC to continue to evaluate the effectiveness of its outreach activities in the context of both its ultimate goals and budgetary impact.

In addition to focusing on the most cost-effective outreach activities and events, the Office continues to encourage the MLC “to use member demographic statistics and DMP usage analytics, to the extent available and reasonably practicable, to better target its education and outreach efforts towards under-participating groups.”³⁸⁹ We also encourage it to expand its existing songwriter group partnerships to identify the most effective ways to engage songwriters in different regional and genre-specific communities.

D. Analysis

Overall, the MLC’s submissions and the supporting comments demonstrate that it satisfies the statutory criteria to continue its designation as the statutory mechanical licensing collective. Since the MMA’s enactment, the MLC has made impressive strides in bringing Congress’s vision for the new blanket mechanical license to life.

The MLC has distributed more than \$3.9 billion in royalties, its overall match rate is approximately 92%, and it has over 80,000 members.³⁹⁰ Its success has also been recognized by various industry awards and recognitions, including the “2024 Impact Award for Technological Excellence from the Music Business Association, recognition by Fast Company as one of the World’s Most Innovative Companies, and recognition by Women in Music as one of the Best Places to Work 2025.”³⁹¹

These achievements are not diminished by the fact that some commenters want the MLC to develop

³⁸⁹ *Id.* at 38.

³⁹⁰ *Blanket Royalties*, MLC, <https://www.themlc.com/blanket-royalties> (last visited May 26, 2026); *The MLC Quarter Note: Q1 2026*, The MLC, <https://emails.themlc.com/the-mlc-quarter-note-q1-2026> (last visited May 26, 2026); *Member Newsletter*, The MLC (May 2026), <https://emails.themlc.com/may-2026-member-updates>.

³⁹¹ MLC Ex Parte Letter at 4 (July 21, 2025); see also InHerSight & Women In Music, *The Best Places to Work in the Music Industry 2026*, <https://www.inhersight.com/women-in-music-2026>, (last visited May 26, 2026) (listing the MLC in Women in Music’s Best Places to Work for 2026).

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 105.

³⁷⁷ *Id.* at 103.

³⁷⁸ *Id.* at 106.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ Big Machine Music Initial Comments at 2; BMAC & MAC Reply Comments at 3 (“The MLC has been proactive in educating songwriters, particularly those who are self-published.”); NSAI Initial Comments at 2 (noting that the MLC’s customer service is staffed with “many human . . . representatives specifically trained and assigned to assist self-published songwriters and even published songwriters who have questions and concerns related to their digital mechanical royalties”); Peermusic Initial Comments at 2 (“No department is without a reliable contact at the MLC for any issue that may arise, from our colleagues in IT to Royalties to Copyright to Legal and Business Affairs”).

³⁸² Go to Eleven Entertainment Initial Comments at 2; NSAI Initial Comments at 2 (“The MLC took

additional administrative or technological capabilities. Nor are they diminished by the Office's above-noted recommendations for further improvement. As NSAI put it best, "While NSAI is very complimentary of the work The MLC has done to date, no organization is perfect and there is always room for improvement. Redesignation is an opportunity to review such areas for improvement as well as to tout successes."³⁹²

To further the MLC's continued improvement and success, the Office is making several recommendations. First, we encourage the MLC to continue to improve its database tools and processes for registering and claiming works. We expect it to continue engagement with members to increase the efficiency of its workflows and practices. Second, to measure the effectiveness of the MLC's matching methodology and initiatives for works earning different ranges of royalties, we expect it to implement routine disclosures of match rates by the royalty value tiers provided during this proceeding. Third, we recommend that the MLC adopt additional metrics to assess whether it is making efficient uses of the assessment funds, with particular focus on allocations for education and outreach initiatives. Fourth, to better align with the goal to encourage wider songwriter participation, we recommend that it amend its bylaws governing the selection of the Board's songwriter representatives. Finally, we expect the MLC to exhibit greater transparency concerning its investment practices and to engage with stakeholders and the Office to address the important policy gaps discussed above.

IV. Evaluation of the Digital Licensee Coordinator

The Office requested information from the DLC and the public regarding whether the DLC's designation as the digital licensee coordinator should be continued.³⁹³ Few commenters responded directly to the DLC's redesignation proposal and even those voicing criticisms did not oppose redesignation.³⁹⁴ In subsequent *ex parte* meetings, however, NMPA and the MLC challenged the DLC's continued designation.³⁹⁵

To continue as the digital licensee coordinator, the DLC must be a single nonprofit entity that is endorsed by and enjoys substantial support from DMPs

and significant nonblanket licensees that together represent the greatest percentage of the U.S. licensee market over the last three years,³⁹⁶ and it must possess the administrative and technical capabilities required to perform its statutory functions.³⁹⁷ For the reasons described below, the Register concludes that the DLC meets the statutory criteria and continues its designation.

A. Nonprofit and Ownership Status

The DLC provided a certificate of incorporation to demonstrate that it is "a nonprofit, not owned by any other entity" created to carry out its responsibilities under the MMA.³⁹⁸ While no comments addressed the DLC's nonprofit status, the MLC questioned whether the DLC satisfies the requirement that it cannot be "owned by any other entity," suggesting that it is controlled by DIMA.³⁹⁹ Recognizing that "nonprofits lack traditional equity ownership," the MLC asked the Office to evaluate ownership through frameworks such as "operational control, governance overlap, and financial dependency."⁴⁰⁰ In addition, the MLC and NMPA raised concerns over the overlap between the operations of the DLC, which is statutorily prohibited from engaging in lobbying activities, and DiMA, which is an advocacy organization.⁴⁰¹ They highlighted that the same representatives comprise the boards of both organizations;⁴⁰² that "[t]he DLC has no employees, and its work is carried out entirely by DiMA";⁴⁰³ and that the DLC's IRS Form 990 did not list any DLC employees or legal fees.⁴⁰⁴

The DLC refuted these concerns. It argued that "independence is not the relevant standard," rather "[t]he

question is whether the DLC is *owned* by anyone else."⁴⁰⁵ It asserted that "DLC and DIMA remain entirely distinct entities,"⁴⁰⁶ "[t]here is nothing in the statute that prevents DIMA and the DLC from sharing staff," there is "nothing that extends the MMA's lobbying prohibition from the DLC to DIMA,"⁴⁰⁷ and there is not "anything remotely improper about the relationship between DIMA and the DLC."⁴⁰⁸ It explained that "[s]ection 115 indicates that overlap between DIMA and the DLC is to be expected," as "the DLC must be 'endorsed by and enjoy[] substantial support from digital music providers' representing 'the greatest percentage of the licensee market for uses of musical works in covered activities.'"⁴⁰⁹ Further, "the statute expressly contemplates that DIMA would step in to fulfill certain of the DLC's statutory functions in the event that no digital licensee coordinator is designated."⁴¹⁰

The Office acknowledges the concerns about the DLC's independence. We agree that the MMA contemplates that the DLC will operate as a separate entity from DIMA (or any other organization),⁴¹¹ and that this distinction is particularly important given the DLC's lobbying restrictions.⁴¹² At the same time, we are not persuaded by arguments equating the MMA's "ownership" criterion with "independence," especially as the statute created an explicit independence requirement for the MLC's officers, but not for the DLC.⁴¹³ We also recognize that some natural overlap in the DLC and DIMA is expected, as they share board members.

Nevertheless, the Office believes that the DLC's representatives should take great care to avoid the appearance of impropriety or conflicts. In particular, they should avoid the impression that the DLC is owned by DIMA.⁴¹⁴ They

³⁹⁶ See Initial Designation at 32280–86 (discussing the Office's conclusions regarding how the endorsement criterion is applied).

³⁹⁷ See 17 U.S.C. 115(d)(3)(C)(i–iii) (enumerating DLC's thirteen functions, in addition to the ability to administer voluntary licenses); see also *id.* at 115(d)(3)(B)(iii).

³⁹⁸ *Id.* at 115(d)(5)(A)(i); see DLC Initial Submission Ex. A, at 1 (certificate of incorporation) (stating that "[n]o part of the net earnings of [DLC] shall inure to the benefit of, or be distributable to, its members, trustees, directors, officers or other private persons").

³⁹⁹ MLC *Ex Parte* Letter at 3–5 (Aug. 27, 2025).

⁴⁰⁰ *Id.* at 4–5 (citing *Freeman v. Complex Computing Co.*, 119 F.3d 1044, 1051 (2d Cir. 1997) (providing a list of ten factors to consider)).

⁴⁰¹ NMPA Reply Comments at 14–16; see MLC *Ex Parte* Letter at 5–6 (Aug. 27, 2025).

⁴⁰² NMPA Reply Comments at 14–15; MLC *Ex Parte* Letter at 5 n.8 (Aug. 27, 2025).

⁴⁰³ MLC *Ex Parte* Letter at 3 (Aug. 27, 2025); NMPA *Ex Parte* Letter at 3 (Sept. 5, 2025) ("DiMA carries out the activities of the DLC using DiMA's resources and DiMA's employees.").

⁴⁰⁴ NMPA Reply Comments at 16–18; see MLC *Ex Parte* Letter at 3–4 & n.5 (Aug. 27, 2025).

⁴⁰⁵ DLC *Ex Parte* Letter at 3 (Sept. 22, 2025).

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 5.

⁴⁰⁸ *Id.* at 4.

⁴⁰⁹ *Id.* (citing 17 U.S.C. 115(d)(5)(A)(ii)).

⁴¹⁰ *Id.* (citing 17 U.S.C. 115(d)(3)(D)(i)(IV)).

⁴¹¹ See *id.* ("DLC and DiMA remain entirely distinct entities.").

⁴¹² 17 U.S.C. 115(d)(5)(C)(ii).

⁴¹³ *Id.* at 115(d)(5)(D)(viii) (stating that, with respect to MLC's independent officers, "[a]n individual serving as an officer of the mechanical licensing collective may not, at the same time, also be an employee or agent of any member of the board of directors of the collective or any entity represented by a member of the board of directors").

⁴¹⁴ See MLC *Ex Parte* Letter at 3 (Aug. 27, 2025) (citing Kristin Robinson, *DIMA CEO: Legal Fights, Transparency & Neutrality—Improvements Streamers Suggest for the MLC*, Billboard (July 29, 2024), <https://www.billboard.com/pro/dima-ceo->

Continued

³⁹² NSAI Initial Comments at 3.

³⁹³ See NOI at 5941–42.

³⁹⁴ See Imbr Initial Comments; NMPA Initial Comments; NMPA Reply Comments.

³⁹⁵ NMPA *Ex Parte* Letter at 3 (Sept. 5, 2025); MLC *Ex Parte* Letter at 3–7 (Aug. 27, 2025).

should observe all relevant formalities, ensure that their actions as DLC representatives serve the interests of the DLC, and be transparent about which organization they are representing in public communications. The Office expects that the DLC will take the concerns expressed seriously.

In sum, the DLC has established that it is “a nonprofit, not owned by any other entity” created to carry out its responsibilities under the MMA.⁴¹⁵ Accordingly, it satisfies the first statutory criterion for designation.

B. Indicia of Endorsement and Support

The DLC also must be “endorsed by and enjoy[] substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.”⁴¹⁶ On this criterion, the DLC claimed that its membership has grown substantially⁴¹⁷ and includes “all of the largest streaming services in the market segment, as well as many medium and small-sized services.”⁴¹⁸ Additionally, during both the initial and current

mma-mlc-interview-legal-fights-transparency-neutrality-improvements (noting the statement of the DLC’s Board member and DiMA’s President and CEO that “DiMA administers the DLC, so the running of the DLC is done by DiMA”).

⁴¹⁵ 17 U.S.C. 115(d)(5)(A)(i); see DLC Initial Submission Ex. A, at 1 (certificate of incorporation) (stating that “[n]o part of the net earnings of [DLCI] shall inure to the benefit of, or be distributable to, its members, trustees, directors, officers or other private persons”).

⁴¹⁶ 17 U.S.C. 115(d)(5)(A)(ii); see NOI at 5945. As noted in the initial designation rulemaking, the statutory language here parallels the MLC’s endorsement and support criteria. Compare 17 U.S.C. 115(d)(5)(A)(ii) (requiring that the DLC be “a single entity that . . . is endorsed by and enjoys substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years”), with *id.* at 115(d)(3)(A)(ii) (requiring that the MLC be “a single entity that . . . is endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years”).

⁴¹⁷ DLC Initial Submission at 2 (stating that the DLC “has . . . seen substantial growth in the organization’s membership over the past five years. As explained below, [its] membership has more than tripled since 2019, leading to an increase in both the size and diversity of the organization. [The DLC] anticipates that this growth trend will continue into the future as well”).

⁴¹⁸ *Id.* at 6–7. The DLC also stated that, based on “over 35 distributions’ worth of reporting data from blanket licensees,” the MLC “confirmed that DLC[]’s members represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.” *Id.* at 7 and n.8.

designation process, it cited aggregated metrics from the Harry Fox Agency and Music Reports, Inc., which indicated that DLC members “represented by [these two companies] combined had . . . over 88% of the aggregate royalties paid” in 2016, 2017, and 2018.⁴¹⁹ After the Office requested updated sources confirming this information, the DLC provided citations that support that its members “ma[ke] up the vast majority of the licensee market in interactive streaming.”⁴²⁰

The Copyright Office must evaluate the support of both the DMPs who will use the blanket license as well as significant nonblanket licensees.⁴²¹ When asked whether it had the support of any significant nonblanket licensees, the DLC noted that “[t]here are currently only five relatively small services operating as SNBLs, the most well-known of which (Bandcamp LLC) is a DLC member.”⁴²² It also asserted that it “readily meets the statutory criteria,” as the MMA “simply requires that DLC enjoy the support ‘from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities.’”⁴²³

Most comments did not address the DLC’s endorsement criteria. While NMPA pointed out that no DMP submitted separate comments supporting the DLC’s continuing designation,⁴²⁴ the services on the DLC’s Board clearly endorse its continued designation. Imbr also suggested that the DLC’s efforts to support nonblanket (*i.e.*, voluntary) licensees were insufficient in various ways, but its comments were not directed specifically towards the endorsement criteria.⁴²⁵

⁴¹⁹ Initial Designation at 32293 (quoting the DLC 2019 Initial Designation Proposal at 5–6 (Mar. 21, 2019)); see also DLC Initial Submission at 7.

⁴²⁰ DLC Ex Parte Letter at 5 (Aug. 8, 2025) (citing Dylan Smith, *The ‘Big Three’ of Streaming: Spotify, Apple Music, and Amazon Music Now Account for Over 90% of U.S. Subscribers*, DMN Pro Data Finds, *Digit. Music News* (July 5, 2024), <https://www.digitalmusicnews.com/2024/07/05/music-streaming-market-share-us/>; Jacca-RouteNote, *Just 3 music services dominate 90% of the U.S. market*, RouteNote Blog (July 8, 2024), <https://routenote.com/blog/just-3-music-services-dominate-90-of-the-u-s-market/>).

⁴²¹ See 17 U.S.C. 115(d)(5)(A)(ii).

⁴²² DLC Ex Parte Letter at 5 (Aug. 8, 2025).

⁴²³ *Id.* (citing 17 U.S.C. 115(d)(5)(A)(ii) (emphasis added)).

⁴²⁴ NMPA Reply Comments at 16 n.46.

⁴²⁵ Imbr Initial Comments at 1–3 (“The notable absence of mention of voluntary licenses in the DLC’s submission, . . . underscores a significant oversight concerning this critical component of the MMA.”). Imbr also supported the DLC’s continued designation. *Id.* at 1.

As the DLC enjoys the endorsement and support of the majority of digital service providers and SNBLs, measured by the largest aggregate percentage of total royalties paid from the use of musical works in covered activities in the United States,⁴²⁶ it satisfies the second statutory criterion for designation.

C. Administrative and Technical Capabilities

In addition to establishing a governance structure, criteria for membership, and membership dues, the MMA authorizes the DLC to perform the following functions: enforce notice and payment obligations for the administrative assessment; participate in Copyright Office proceedings involving the blanket license; participate in administrative assessment proceedings before the CRJs; provide documentation for use in proceedings to set the statutory mechanical license’s rates and terms; maintain records of its activities; assist in publicizing the MLC’s existence and the ability of copyright owners to claim royalties with the MLC; and “engage in such other activities as may be necessary or appropriate to fulfill [its statutory] responsibilities.”⁴²⁷ The DLC provided updates on its fulfillment of these different functions.

1. Governance

The DLC’s board of directors (“Board”) is currently composed of Nick Williamson (Apple, Inc.), Josephine Speranza (Spotify), Jen Rosen (Google), Amy Braun (Amazon), and Wiatt Bingley (Pandora).⁴²⁸ Since its founding, the DLC has expanded its membership to seventeen DMPs, “including many medium and small-sized services.”⁴²⁹

⁴²⁶ See Initial Designation at 32294 (identifying total paid royalties as the appropriate statutory metric).

⁴²⁷ 17 U.S.C. 115(d)(5)(C)(i). Of course, the DLC is also responsible for organizing its governance structure and membership requirements, which it has successfully done over the past several years. See DLC Initial Submission Ex. B (“DLC Bylaws”). Additionally, the DLC must maintain records of its activities, see 17 U.S.C. 115(d)(5)(C)(i), and appoint representatives to the MLC’s Operations Advisory Committee and one non-voting DMP member to the MLC Board, see *id.* at 115(d)(3)(D)(iv)(II), (i)(IV).

⁴²⁸ See MLC and DLC Contact Information, *Boards of Directors, and Committees*, U.S. Copyright Office, <https://www.copyright.gov/music-modernization/mlc-dlc-info> (last visited May 26, 2026); DLC Ex Parte Letter at 1 (Aug. 8, 2025); DLC Ex Parte Letter at 1 (Sept. 22, 2025) (also listing Graham Davies, DiMA CEO as “Board member, Secretary and Treasurer of DLC”).

⁴²⁹ DLC Initial Submission at 8. DLC’s current members are Amazon, Apple, Pandora, Spotify, YouTube, Audiomack, bandcamp, Beatport, Hangout FM, iHeartMedia, MedRhythms, Paste,

The DLC's bylaws govern membership requirements and responsibilities, meetings, Board and committee structures, and include other rules and operational provisions.⁴³⁰ They create three classes of membership (principal, charter, and general). As of 2024, the principal members have been determined on a market-share basis and consist of those "charter members" with the five highest stream counts, reevaluated every two years.⁴³¹ These members are responsible for dues covering at least 60% of the DLC's yearly operating budget.⁴³² The remaining members are general members.⁴³³

As previously noted, since its initial designation, the DLC has increased its membership from five to seventeen members.⁴³⁴ It attributes this growth to its outreach and leadership in implementing the blanket license system.⁴³⁵ The DLC also notes that it "regularly engages with non-member DMPs, responding to queries and serving as a resource, in support of its commitment to continued development of the music streaming ecosystem."⁴³⁶

As authorized by the MMA,⁴³⁷ the DLC appointed DIMA's CEO to serve as a nonvoting member of the MLC's Board.⁴³⁸ It also appointed six representatives to the MLC's Operations Advisory Committee.⁴³⁹ It noted that its

representatives' participation in the MLC committees has provided valuable insight into the MLC's operations and facilitated discussions with the MLC.⁴⁴⁰

In addition to the concerns regarding the DLC's independence, addressed above, commenters raised other governance-related issues. NMPA expressed concern that only the five founding-member DMPs (*i.e.*, the larger U.S. DMPs) have seats on the DLC's Board.⁴⁴¹ Regarding the participation of smaller DMPs on its Board, the DLC emphasized that, because the largest members pay the majority of dues, "smaller [DMPs may] become DLC . . . members at dramatically lower dues, which has in turn enabled DLC . . . to grow and diversify its membership and ensure that DMPs of all sizes are able to participate in both [the DLC's] operations and the broader mechanical licensing ecosystem."⁴⁴² Moreover, it highlighted its accommodation of smaller licensees in "modifying the allocation of the administrative assessment to alleviate the burden on such licensees."⁴⁴³ Because its governance structure places the greatest financial burden on its largest members, smaller streaming platforms may join at a more manageable cost.⁴⁴⁴

The MLC suggested that the Office "require the DLC to produce annual reports comparable to The MLC's for prior periods, which can be reviewed by stakeholders and become part of the record of this proceeding," and that such reports "could also support the ongoing evaluation of the DLC's qualifications and activities."⁴⁴⁵ The DLC responded that its Board "will

discuss whether additional disclosures could be helpful and appropriate for its membership and the public, either in the form of an annual report, posts on its websites, or otherwise."⁴⁴⁶

The MMA does not dictate the DLC's bylaws or Board membership. Further, no DMPs submitted comments opposing the DLC's dues structure, bylaws, or Board membership rules, and the DLC maintains that DMPs of all sizes are well represented through committee leadership roles and are well informed of its activities.⁴⁴⁷

Notwithstanding the DLC's efforts, the Office recognizes that its Board membership rules, including the costs of becoming a charter member, may deter smaller DMPs from participating.⁴⁴⁸ As a result, the DLC may struggle to attract leadership that broadly represents its varied constituents. Although it has taken steps to improve its organizational functioning,⁴⁴⁹ we encourage it to consider additional ways for smaller DMPs to participate in leadership activities going forward.

2. Enforcing Notice and Payment Obligations Related to the Administrative Assessment

On enforcement, the DLC stated that it has "consistently been a resource to the MLC in connection with the MLC's enforcement efforts against DMPs who have not met their payment obligations (to the extent that those issues have arisen)," ⁴⁵⁰ but it did not provide further details. Instead, it focused on its efforts to "consult[] with a broad array of licensees to ensure that the approach taken [with the administrative assessment] strikes the balance between . . . equitable distribution among those DMPs whose use of the blanket license creates [an] administrative burden for the MLC, and . . . minimizing the expense and burden to smaller and newer licensees in a market segment with an already-high barrier to entry." ⁴⁵¹ As the DLC indicated in the

prestemusic, Qobuz, Soundcloud, TIDAL and Wolfgang's. *See id.*; *see also Our Members, DLC*, <https://digitallicenseecordinator.org/> (last visited May 26, 2026) (reflecting bandcamp and prestomusic as DLC members, but omitting Idagio and Napster, who were previously identified as DLC members).

⁴³⁰ *See generally* DLC Bylaws. These operational procedures include a voting structure, a meeting schedule, and a structure for collecting dues and funding the DLC.

⁴³¹ *Id.* at 3. "Charter members" are those members who have adhered to the DLC's mission and standards for at least two years and have paid relevant dues. *Id.*

⁴³² *See id.* at 2–5. The bylaws also set out the voting structure, a meeting schedule, and a structure for collecting dues and funding the DLC. *Id.* at 4–10, 12.

⁴³³ *See id.* at 2, 5.

⁴³⁴ *See* DLC Initial Submission at 8; *see also Our Members, DLC*, <https://digitallicenseecordinator.org/> (last visited May 26, 2026). The Office noted in its initial designation that in 2019, "[DLC] membership d[id] not include TIDAL, Deezer, Soundcloud, iHeartRadio, or Napster." Initial Designation at 32295. Since then, TIDAL, Soundcloud, and iHeartRadio have joined the DLC. *See* DLC Submission at 8.

⁴³⁵ *See* DLC Initial Submission at 8.

⁴³⁶ *Id.* at 9.

⁴³⁷ 17 U.S.C. 115(d)(3)(D)(i)(IV).

⁴³⁸ *See* DLC Initial Submission at 9.

⁴³⁹ *See id.* at 10. These representatives are Amy Braun (Amazon); Jen Rosen (Google); Brandon Shevin (Beatport); Josephine Speranza (Spotify); Meghna Viswanadha (Apple); and Wyatt Bingley (SiriusXM/Pandora). *See Advisory Committees, MLC*, <https://www.themlc.com/committees> (last

visited May 26, 2026); *see also MLC and DLC Contact Information, Boards of Directors, and Committees*, U.S. Copyright Office, <https://www.copyright.gov/music-modernization/mlc-dlc-info> (last visited May 26, 2026).

⁴⁴⁰ *See* DLC Initial Submission at 9–10. Though not required by the MMA, the DLC has also appointed representatives to serve on the MLC's Budget Performance Advisory Committee ("BPAC") and Audit Committee. *See id.* at 10–11. The BPAC, which makes recommendations to the MLC Board on budgetary issues, and the DLC's representation on BPAC ensures that DMPs have insight into how the MLC is spending the administrative assessment that DMPs pay. *See id.* at 10. The MLC's Audit Committee "is responsible under the bylaws for ensuring that the statutory audit report outlined in 17 U.S.C. [sec.] 115(d)(3)(D)(ix)(II) occurs, and to oversee external audits of The MLC's financial statements that The MLC arranges to be done by independent auditors." MLC 2024 Annual Report at 57; DLC Initial Submission at 11 ("[T]he purpose of [the MLC's Audit Committee] is to assist the board with oversight of the MLC's financial reporting and external audits of the MLC.").

⁴⁴¹ *See* NMPA Reply Comments at 14.

⁴⁴² DLC Reply Submission at 8–9.

⁴⁴³ DLC Initial Submission at 9.

⁴⁴⁴ *See* DLC Bylaws at 5; DLC Initial Submission at 9.

⁴⁴⁵ MLC *Ex Parte* Letter at 6 (Aug. 27, 2025).

⁴⁴⁶ DLC *Ex Parte* Letter at 6 (Sept. 22, 2025).

⁴⁴⁷ *See* DLC Reply Submission at 9 ("DMP members of all sizes are represented on DLC[]'s various committees, and DLC[] engages with its entire membership regularly. For example, in addition to its regular Board and committee meetings, DLC[] also holds monthly meetings open to all of its members in order to ensure that members are kept apprised of DLC[]'s activities, and have the opportunity to provide feedback.').

⁴⁴⁸ *Cf.* DLC Bylaws at 5, 11.

⁴⁴⁹ For example, the DLC clarified its officer rotation structure and added procedures to permit an individual to rotate in or out of a company's primary representative seat. *See* DLC Initial Submission at 8.

⁴⁵⁰ DLC Initial Submission at 12.

⁴⁵¹ *Id.* at 11.

initial designation proceeding, it believed that “by prioritizing negotiations and cooperation among licensees and the MLC,” it could “minimize the need for contested proceedings or enforcement actions.”⁴⁵²

3. Participation in Proceedings before the Copyright Office and Copyright Royalty Judges

In addition to the administrative assessment proceedings noted above, the DLC has participated in several of the Office’s rulemaking proceedings since its initial designation, including those “related to the public musical works database, database access and use”; the “appropriate transparency of the MLC; notices of license, data collection efforts, reports of usage and payment by DMP blanket licensees and related records of use, notices of non-blanket activity and reports of usage by [significant nonblanket licensees]”; “data collection efforts by musical work copyright owners; the protection of confidential information by the MLC and DLC; the applicability of the derivative works exception to termination rights under the Copyright Act; the appropriate treatment of public domain works; the reporting and payment of accrued unmatched royalties; and the applicability of late fees.”⁴⁵³

To aid these efforts, the DLC established a Policy Committee, tasked with “coordinating DLC[]’s responses to proposed Office rulemaking, as well as highlighting points that may require additional clarification and/or further rulemaking.”⁴⁵⁴ The Policy Committee also identifies potential issues that require coordination with the MLC.⁴⁵⁵

4. Maintaining Records

Since July 2020, the DLC’s Director of Operations and Outreach has been the primary officer responsible for ensuring that the DLC’s records are properly created and maintained.⁴⁵⁶ The DLC has also implemented procedures, including in its bylaws and Code of Conduct and Ethics, to ensure that confidential,

private, proprietary, or privileged information is not improperly disclosed or used by its directors or committee members,⁴⁵⁷ as well as protocols to shield the MLC’s shared confidential information from improper use or disclosure.⁴⁵⁸ Finally, the DLC’s representative on the MLC Board serves pursuant to a confidentiality agreement that is designed to keep deliberations confidential to the extent they relate to the MLC’s internal operations and are not intended to be shared with the DLC at large.⁴⁵⁹

5. Publicizing the MLC’s Existence and the Ability To Claim Royalties; Other Education and Outreach

The DLC reported that it has engaged in a variety of educational and outreach efforts pursuant to its statutory obligation to assist the MLC with locating and identifying copyright owners of unmatched musical works and unclaimed royalties.⁴⁶⁰ These efforts included “posting contact information for the collective at reasonably prominent locations on [DMP] websites and applications” and “conducting in-person outreach activities with songwriters.”⁴⁶¹ The DLC describes them as successful,⁴⁶² and DMPs such as “Apple, Amazon, Spotify, YouTube, Audiomack, Napster and Qobuz[] have prominently posted the MLC’s contact information on their respective websites.”⁴⁶³ Additionally, the DLC has hosted open Q&A webinars⁴⁶⁴ and has “regularly participated in industry panels to explain the section 115 license and MLC’s operations to all stakeholders—

digital services, rightsholders, and creators.”⁴⁶⁵

Very few commenters addressed the DLC’s administrative and technical capabilities.⁴⁶⁶ Based on evidence in its proposal and subsequent comments, the Office finds that the DLC has satisfied the third statutory criterion.

D. Analysis

Having reviewed the DLC’s submissions and engaged in further discussions about its redesignation proposal, the Office finds that it continues to meet the MMA’s criteria for redesignation. The DLC has created a governance structure, criteria for membership, and a dues structure that has increased its membership since its initial designation. Moreover, it has shown willingness to adjust its structure and operations to best serve the MMA’s goals. It has demonstrated its ability to meet the administrative and technical demands of its role.

Going forward, the Office suggests that the DLC should focus on the following matters. First, as noted above, it should take great care to not give the impression of impropriety or conflicts, especially with respect to perceived representation of DIMA. Second, the Office expects that it will continue to be “regularly in touch with companies that are not formally members of the organization . . . [and will] offer[] those companies the opportunity to join.”⁴⁶⁷ As there are currently over fifty DMPs who have submitted notices of license or notices of nonblanket activity to the MLC that are not DLC members, the DLC should continue to work to increase its membership by the next review of its designation. Third, it should similarly work to increase the number of DMPs that have prominently posted the MLC’s contact information on their websites and applications. Finally, while the DLC has implemented procedures and policies to ensure confidential, private, proprietary, or privileged information will not be improperly disclosed or used by its directors or committee members, it is unclear whether those policies apply to its personnel, including any employees, volunteers, or contractors.⁴⁶⁸ The DLC

⁴⁵² DLC 2019 Initial Designation Proposal Ex. C, at 3.

⁴⁵³ DLC Initial Submission at 13–15 (citations omitted); *see also* MLC *Ex Parte* Letter at 4 n.5 (Aug. 27, 2025) (“Known DLC work in 2020 consisted primarily of its full participation in at least five Copyright Office rulemakings, involving more than 20 written submissions and 10 meetings with the Office . . .”).

⁴⁵⁴ DLC Initial Submission at 13.

⁴⁵⁵ *See id.*

⁴⁵⁶ *See id.* at 8, 15. Among other duties, the Director of Operations and Outreach keeps minutes of all DLC Board meetings and annual meetings and maintains detailed membership records and listservs to facilitate widespread participation of DLC members. *See id.* at 15.

⁴⁵⁷ *See id.* at 15 (describing Code of Conduct and Ethics); DLC *Ex Parte* Letter at 4 (Aug. 8, 2025) (attaching Code of Conduct and Ethics). All DLC members must enter into a confidentiality agreement “designed to facilitate and safeguard the exchange of information” when they join the DLC. *See* DLC Initial Submission at 15–16.

⁴⁵⁸ *See* DLC Initial Submission at 16.

⁴⁵⁹ *See id.* at 9.

⁴⁶⁰ *See* 17 U.S.C. 115(d)(5)(C)(iii).

⁴⁶¹ *Id.*; *see also id.* at 115(d)(5)(C)(i)(VII).

⁴⁶² *See, e.g.,* DLC Initial Submission at 8–9, 16–17. For example, in October 2020, the DLC began “a direct email campaign to DMPs relaying important information[, dates, deadlines, and resources regarding] the January 1, 2021 License Availability Date.” *Id.* at 17. In these emails, DLC also publicized the MLC’s education efforts and data management tools. *See id.* To facilitate its members’ peer-to-peer outreach, the DLC “developed messaging that DMPs can use for industry education, including in particular, sample language that any DLC[] member or other DMP can display on its website or other platform to drive copyright holders to the MLC’s website.” *Id.* at 16.

⁴⁶³ *Id.* at 16; *see id.* at 16 n.21 (collecting member websites displaying DLC’s contact information).

⁴⁶⁴ *See id.* at 17. DLC invited questions from DMPs regarding the section 115 blanket license, the MLC administrative assessment allocation system, and DLC membership. *See id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *But see* MLC *Ex Parte* Letter at 5 (Aug. 27, 2025) (“While it originally committed to enforcing administrative assessments, supporting public awareness of The MLC and unclaimed royalties, assisting in rate proceedings, and maintaining independent records, there is little public evidence that it has met these responsibilities consistently during the term of its initial designation.”).

⁴⁶⁷ DLC Initial Submission at 8.

⁴⁶⁸ Notwithstanding the DLC’s procedures and policies, the Office’s regulations governing “confidential, private, proprietary, or privileged

should clarify whether its procedures and policies apply to all personnel.

V. Conclusion

For the reasons set forth above, the Register is continuing the designations of the MLC and DLC, which the Librarian approves. The MLC has demonstrated that it continues to meet each of its statutory criteria for redesignation and that its individual Board members are well qualified to serve on its Board pursuant to the statute. Similarly, the DLC has demonstrated that it continues to meet each of its statutory criteria for designation, and that its individual Board members are well qualified to serve on its Board pursuant to the statute.

As each designation is being continued, there is no need to amend the Office's regulations at this time.

Dated: May 29, 2026.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Robert Newlen,

Acting Librarian of Congress.

[FR Doc. 2026–11117 Filed 6–2–26; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Document Number: 26–032]

Name of Information Collection: NASA Front Door

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of new information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, under the Paperwork Reduction Act (PRA), invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by July 6, 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”.

information” apply to the DLC’s “personnel.” 37 CFR 210.34(a).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, or email hq-ocio-pra-program@mail.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Front Door (NFD) is an online/web-based tool that will serve as a centralized digital hub to help facilitate engagement between individuals, organizations, and the workforce of NASA, providing personalized support, guidance, and efficient access to NASA’s extensive programs, opportunities, resources, and expertise. The information collection will consist of general contact information, interest/intake information and when appropriate, demographic information as part of registration profile. The information will be reviewed by NASA representatives to route individuals, organizations and the workforce of NASA to relevant NASA services, opportunities, resources, and/or expertise.

NASA is committed to effectively performing the Agency’s communication function in accordance with Section 203(a)(3) of the National Aeronautics and Space Act of 1958 (as amended) dictates that NASA “provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof”, and to enhance public understanding of, and participation in, the nation’s aeronautical and space program.

II. Methods of Collection

Online/web-based tool built on a Salesforce platform.

III. Data

Title: NASA Front Door.

OMB Number: 2700–xxxx.

Type of Review: New information collection.

Affected Public: Individuals (e.g., eligible students, educators, and awardee principal investigators; invited guests, etc.), organizations, and the workforce of NASA interested in accessing publicly available NASA services.

Estimated Annual Number of Activities: 10.

Estimated Number of Respondents per Activity: 60.

Annual Responses: 600,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 150,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA’s estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2026–11108 Filed 6–2–26; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Document Number: 26–033; NASA Docket Number: NASA–2026–0265]

Name of Information Collection: JSC Form 1830 Report of Medical Examination

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995.

DATES: Comments are due by August 3, 2026.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice at <http://www.regulations.gov> and search for NASA Docket NASA–2026–0265.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, or email hq-ocio-pra-program@mail.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Since the mid-1960s, neutral buoyancy has been an invaluable tool for testing procedures, developing hardware, and training astronauts. Neutrally buoyant conditions sufficiently simulate reduced gravity conditions, comparable to the environmental challenges of space. The Neutral Buoyancy Laboratory (NBL) at NASA Johnson Space Center (JSC) provides opportunities for astronauts to practice future on-orbit procedures, such as extravehicular activities (EVA), and to work through simulation exercises to solve problems encountered on-orbit. NASA hires individuals with demonstrated diving experience as NBL Working Divers in teams comprised of four divers; two safety divers, one utility diver, and one cameraman to assist astronauts practice various tasks encountered in space.

NASA allows guest divers, typically non-federal photographers representing the media, opportunities to engage in the NBL diving experience. To participate, guest divers must present a dive physical, completed within one year of the targeted diving opportunity, for review by the NBL Dive Physician.

If the guest diver does not have a current U.S. Navy, Association of Diving Contractors (ADC), or current British standard for commercial diving physical, they are required to complete a medical examination, performed by a certified Diving Medical Examiner. The results of the physical will be documented by on the JSC Form 1830 "Report of Medical Examination" for Applicant and presented for review prior to participating in diving activities conducted at the JSC NBL. The associated cost for guest divers to complete the medical examination will vary, typically based on the guest diver's insurance.

A completed JSC Form 1830 with test results attached as applicable, must be submitted to enable NASA to validate an individual's physical ability to dive in the NBL at NASA Johnson Space Center.

NASA is committed to effectively performing the Agency's communication function in accordance with Section 203(a)(3) of the National Aeronautics and Space Act of 1958 (as amended) dictates that NASA "provide for the widest practicable and appropriate dissemination of

information concerning its activities and the results thereof", and to enhance public understanding of, and participation in, the nation's aeronautical and space program.

II. Methods of Collection

Paper.

III. Data

Title: JSC Form 1830—Report of Medical Examination.

OMB Number: 2700–xxxx.

Type of Review: Renewal of information collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 30.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 30.

Estimated Time Per Response: 90 minutes.

Estimated Total Annual Burden Hours: 45 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2026–11109 Filed 6–2–26; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended,

notice is hereby given that 17 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the SUPPLEMENTARY

INFORMATION section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Further information with reference to these meetings can be obtained from Daniel Beattie, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; ogpo@arts.gov or call 202–682–5688.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of April 30, 2026, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:
Museums (review of applications):
This meeting will be closed.

Date and time: July 15, 2026; 11:30 a.m. to 1:30 p.m.

Museums (review of applications):
This meeting will be closed.

Date and time: July 15, 2026; 2:30 p.m. to 4:30 p.m.

Research Grants in the Arts (review of applications): This meeting will be closed.

Date and time: July 21, 2026; 1:00 p.m. to 3:00 p.m.

Research Grants in the Arts (review of applications): This meeting will be closed.

Date and time: July 22, 2026; 10:00 a.m. to 12:00 p.m.

Research Grants in the Arts (review of applications): This meeting will be closed.

Date and time: July 24, 2026; 10:00 a.m. to 12:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: July 24, 2026; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: July 27, 2026; 2:00 p.m. to 4:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: July 27, 2026; 2:00 p.m. to 4:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: July 28, 2026; 10:00 a.m. to 12:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: July 28, 2026; 12:00 p.m. to 2:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: July 28, 2026; 2:00 p.m. to 4:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: July 28, 2026; 3:00 p.m. to 5:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: July 29, 2026; 2:00 p.m. to 4:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: July 30, 2026; 12:00 p.m. to 2:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: July 30, 2026; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: July 30, 2026; 2:00 p.m. to 4:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: July 30, 2026; 3:00 p.m. to 5:00 p.m.

Dated: June 1, 2026.

David Travis,

*Specialist, Guidelines & Panel Operations,
National Endowment for the Arts.*

[FR Doc. 2026-11125 Filed 6-2-26; 8:45 am]

BILLING CODE 7537-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. K2026-5; K2026-856; MC2026-262 and K2026-260; MC2026-263 and K2026-261]

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:* June 8, 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.

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).

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):* K2026-5; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1430; *Filing Acceptance Date:* May 29, 2026; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Jennaca Upperman; *Comments Due:* June 8, 2026.

2. *Docket No(s):* K2026-856; *Filing Title:* USPS Request Concerning Amendment Two to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1087, with Materials Filed Under Seal; *Filing Acceptance Date:* May 29, 2026; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Christopher Mohr; *Comments Due:* June 8, 2026.

III. Summary Proceeding(s)

1. *Docket No(s):* MC2026-262 and K2026-260; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM-GA Contract 1005, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 29, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s)*: MC2026–263 and K2026–261; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1006, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: May 29, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,
Legal Assistant.

[FR Doc. 2026–11092 Filed 6–2–26; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage Negotiated Service Agreements

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 3, 2026.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), it filed with the Postal Regulatory Commission the following requests:

Date filed with postal regulatory commission	Negotiated service agreement product category and No.	MC Docket No.	K Docket No.
05/26/26	PM–GA 997	MC2026–253	K2026–251.
05/26/26	PM–GA 998	MC2026–254	K2026–252.
05/26/26	PM–GA 999	MC2026–255	K2026–253.
05/27/26	PM–GA 1000	MC2026–256	K2026–254.
05/27/26	PM–GA 1001	MC2026–257	K2026–255.
05/28/26	PM–GA 1002	MC2026–258	K2026–256.
05/28/26	PM–GA 1003	MC2026–259	K2026–257.
05/28/26	PM–GA 1004	MC2026–261	K2026–259.
05/29/26	PM–GA 1005	MC2026–262	K2026–260.
05/29/26	PM–GA 1006	MC2026–263	K2026–261.

Documents are available at
www.prc.gov.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.

[FR Doc. 2026–11024 Filed 6–2–26; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105587; File No. SR–CboeEDGX–2026–019]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment No. 1, To Extend the Exchange's Trading Hours to 23 Hours per Day, Five Days per Week

May 29, 2026.

On March 31, 2026, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change to permit the Exchange to offer trading for equity securities and exchange traded products 23 hours per day, five days per week.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

The proposed rule change was published for comment in the **Federal Register** on April 15, 2026.³ The Commission received comment on the Notice and a response from the Exchange.⁴ On May 26, 2026, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original proposed rule change in its entirety (“Amended Proposal”).⁵ The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the Amended Proposal, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend its rules to permit the trading of equity securities and Derivative Securities on the Exchange 23 hours per

³ See Securities Exchange Act Release No. 105206 (Apr. 10, 2026), 91 FR 20213 (“Notice”).

⁴ Comments received in response to the proposal can be found on the Commission's website at <https://www.sec.gov/rules-regulations/public-comments/sr-cboedgx-2026-019>.

⁵ Amendment No. 1 to the proposed rule change contains certain revisions that clarify when the Exchange would be open for trading, and to distinguish the terms “business day” and “trading day” within the context of the Exchange rules related to the 23x5 trading framework. The full text of Amendment No. 1 can be found on the Commission's website at <https://www.sec.gov/rules-regulations/public-comments/sr-cboedgx-2026-19>.

day, five days per week. The text of the proposed rule change is in Exhibit 5.

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 Statutory Basis for, the Proposed Rule Change

Purpose

This Amendment No. 1 to SR–CboeEDGX–2026–019 amends and replaces in its entirety the proposal as originally submitted on April 1, 2026 [sic]. The Exchange submits this Amendment No. 1 in order to clarify

certain points and add additional details to the proposal.

The Exchange proposes to amend its rules to permit the trading of equity securities and Derivative Securities⁶ on the Exchange 23 hours per day, five days per week (“23x5 Trading”).

Background

The Exchange’s proposal to offer 23x5 Trading is driven both by the growth in the volume during the Exchange’s existing Early Trading Session, as well as the growing demand for access to the U.S. markets, particularly by retail investors in the Asia Pacific (“APAC”) region. The Exchange has consistently heard from APAC broker-dealers that their retail investors—particularly those in Hong Kong, Japan, Korea, Singapore, and Australia—want greater access to the U.S. equities market and that they desire trusted venues that offer transparency, robust liquidity, and efficient price discovery.⁷

The average daily volume (“ADV”) during the Early Trading Session⁸ across Cboe’s U.S. equities exchanges increased 110% from January 2023 to February 2026, and increased 404% between January 2022 and February 2026.⁹ Cboe’s U.S. equities exchanges have also increased their market share during the Early Trading Session since 2022, with Early Trading Session ADV increasing 258%¹⁰ between January 2023 and February 2026 alone.¹¹ The Exchange believes that 23x5 Trading will further benefit investors and the national market system by increasing market accessibility, promoting capital formation, and facilitating portfolio management.

Currently, Users¹² may enter orders into the System¹³ from 2:30 a.m. to 8:00 p.m. Eastern Time (“ET”).¹⁴ The

Exchange currently offers five trading sessions on each day it is open for trading: (1) the Early Trading Session¹⁵ (4:00 a.m. to 8:00 a.m.); (2) the Pre-Opening Session¹⁶ (8:00 a.m. to 9:30 a.m.); (3) the Regular Session¹⁷ (the time between the completion of the Opening Process or Contingent Open, as defined in Rule 11.7, and 4:00 p.m.); (4) Regular Trading Hours¹⁸ (9:30 a.m. to 4:00 p.m.); and (5) the Post-Closing Session¹⁹ (4:00 p.m. to 8:00 p.m.). During each session, orders may be entered, executed, or routed away.²⁰

Under current Rule 11.1(a)(1), the Exchange will not accept the following orders prior to 4:00 a.m., or prior to 7:00 a.m. for orders eligible for a “7:00 a.m. Start”:²¹

- orders with a Post Only²² instruction;
- intermarket sweep orders (“ISOs”);²³

¹⁵ See Rule 1.5(jj).

¹⁶ See Rule 1.5(s).

¹⁷ See Rule 1.5(ii).

¹⁸ The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Rule 1.5(y).

¹⁹ See Rule 1.5(r).

²⁰ See Exchange Rule 11.1(a).

²¹ An order designated as eligible for execution during the Early Trading Session beginning at 7:00 a.m. is referred to as a “7:00 a.m. Start.”

²² “Post Only Orders” refers to an instruction that may be attached to an order that is to be ranked and executed on the Exchange pursuant to Rule 11.9 and Rule 11.10(a)(4) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the EDGX Book, except as described below. An order with a Post Only instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below \$1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange. See Exchange Rule 11.6(n)(4).

²³ “Intermarket Sweep Orders” or “ISO” are orders The System will accept ISOs (as such term is defined in Regulation NMS). To be eligible for treatment as an ISO, the order must be: (i) a Limit Order; (ii) marked “ISO”; and (iii) the User entering the order must simultaneously route one or more additional Limit Orders marked “ISO,” if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is superior to the limit price of the ISO entered in the System. Such orders, if they meet the requirements of the foregoing sentence, may be executed at one or multiple price levels in the System without regard to Protected Quotations at away Trading Centers consistent with Regulation NMS (*i.e.*, may trade through such quotations). See Exchange Rule 11.8(c).

• Market Orders²⁴ other than those with a time-in-force- (“TIF”)²⁵ instruction of Regular Hours Only (“RHO”)²⁶ or a Stop Price;²⁷

• orders with a Minimum Execution Quantity²⁸ instruction that also include a TIF instruction of RHO, and all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)²⁹ or Fill-or-kill (“FOK”).³⁰

Certain order types are also subject to session-specific restriction. For example, orders with a Post Only instruction and ISOs are not accepted for queueing during the Pre-Opening Session if designated with a TIF instruction of RHO. To accommodate 23x5 Trading, the Exchange proposes to extend the order entry window and introduce a new Overnight Trading Session, along with conforming amendments to its session-specific order handling rules, as described below.

Proposal

The Exchange proposes to amend its rules to enable 23x5 Trading by expanding the Pre-Opening Session and

²⁴ “Market Orders” are orders to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange. See Exchange Rule 11.8(c).

²⁵ The term “Time in Force” means the period of time that the System will hold an order. See Rule 2.1(f).

²⁶ The term “Regular Hours Only” (“RHO”) means an instruction a User may attach to an order designating it for execution only during Regular Trading Hours, which includes the Opening Process and Re-Opening Process following a halt suspension or pause. See Rule 11.6(q)(6).

²⁷ An order may include a “Stop Price” which will convert the order into a Market Order when the Stop Price is triggered. An order to buy converts to a Market Order when the consolidated last sale in the security occurs at, or above, the specified Stop Price. An order to sell converts into a Market Order when the consolidated last sale in the security occurs at, or below, the specified Stop Price. See Rule 11.8(a)(1).

²⁸ “Minimum Execution Quantity” is an instruction a User may attach to an order with a Non-Displayed instruction or a Time-in-Force of Immediate-or-Cancel requiring the System to execute the order only to the extent that a minimum quantity can be satisfied. See Rule 11.6(h).

²⁹ “Immediate Or Cancel” or “IOC” refers to an instruction the User may attach to an order stating the order is to be executed in whole or in part as soon as such order is received. The portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the EDGX Book. An order with an IOC instruction that does not include a Book Only instruction and that cannot be executed in accordance with Rule 11.10(a)(4) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.11. See Rule 11.6(q)(1).

³⁰ “Fill-or-Kill” or “FOK” refers to an instruction the User may attach to an order stating that the order is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. An order with a FOK instruction is not eligible for routing away pursuant to Rule 11.11. See Rule 11.6(q)(3).

⁶ See Exchange Rule 1.5(ff).

⁷ See “What Does it Take to Offer Around the Clock Equities Trading?”—Cboe Insights, February 2, 2025, available at: <https://www.cboe.com/insights/posts/what-does-it-take-to-offer-around-the-clock-equities-trading/>.

⁸ See Exchange Rule 1.5(jj).

⁹ Source: Internal Cboe Data.

¹⁰ Cboe’s market share for the Early Trading Session (*i.e.*, 4:00 to 7:00 a.m.) trading increased by 305 basis points (“bps”) from January 2023 to February 2026. Source: Internal Cboe Data.

¹¹ Market share increased 33 bps from January 2022 to February 2026. Looking at the full year 2022 against the full year 2025, market share increased 336 bps. Source: Internal Cboe Data.

¹² The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(ee).

¹³ The term “System” shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Rule 1.5(cc).

¹⁴ See Exchange Rule 11.1(a). All times stated herein are in ET.

replacing the Early Trading Session with a new Overnight Trading Session.

Definitions

The Exchange proposes to amend and adopt certain definitions provided in Exchange Rule 1.5.

First, the Exchange proposes to expand the Pre-Opening Session under Rule 1.5(s) from 8:00 a.m. to 4:00 a.m., covering the period from 4:00 a.m. to 9:30 a.m. Because this expansion absorbs the period currently covered by the Early Trading Session under Rule 1.5(jj), the Exchange also proposes to delete the “Early Trading Session” definition and replace it with a new defined term, “Overnight Trading Session.”

As proposed, the Overnight Trading Session shall mean the time between 9:00 p.m. on any night preceding a business day³¹ and 4:00 a.m. on the following calendar day. Rather than defining the Overnight Trading Session by reference to specific calendar days of the week (e.g., Sunday through Thursday), the proposed definition is anchored to the concept of a “night preceding a business day.” This approach provides that the Overnight Trading Session is triggered by the existence of an upcoming trading day rather than by enumeration of calendar days, providing a more durable and flexible framework that is consistent with the Exchange’s proposed Order Acceptance Queueing Time definition in proposed Rule 1.5(kk), as discussed below, and that accommodates changes to the Exchange’s trading calendar (including holidays and other non-business days) without requiring conforming amendments to the session definition itself. For example, when a holiday falls on a Monday, there is no night preceding a business day on the prior Sunday and therefore no Overnight Trading Session will commence that Sunday evening, consistent with the Exchange’s proposed holiday schedule under Rule 11.1(b). As discussed further below under “Contingency on Industry Readiness,” the Exchange shall not commence operation of the Overnight Trading Session until specified Equity Data Plan readiness conditions have been satisfied. The proposed term would provide “Overnight Trading Session” shall mean the time between 9:00 p.m. on any night preceding a business day, as provided in Rule 11.1(b), and 4:00 a.m. Eastern Time on

the following calendar day. For the avoidance of doubt, notwithstanding anything to the contrary in these Rules, the Exchange shall not commence operation of the Overnight Trading Session unless the Equity Data Plans (1) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the Overnight Trading Session that is equivalent to the mechanism established for Exchange trading hours during Regular Trading Hours, and (2) have provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate the Overnight Trading Session. Prior to commencing operation during the Overnight Trading Session, the Exchange will file a proposed rule change pursuant to Section 19(b) of the Exchange Act and the rules thereunder to amend its rules confirming that the Exchange is able to comply with its obligations under the Exchange Act and the rules thereunder during the Overnight Trading Session and that such Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the Overnight Trading Session (“Overnight Trading Session Proposed Rule Change”). If the Overnight Trading Session Proposed Rule Change is not filed within 18 months of the SEC’s approval of this proposed rule change, the Exchange will promptly file a proposed rule change to remove the rules that apply to the Overnight Trading Session.

Second, proposed Rule 1.5(kk) would define “Order Acceptance Queueing Time” to mean 8:55 p.m., the time at which orders may be entered into the System on each night preceding a business day as specified in Rule 11.1(b). The Order Acceptance Queueing Time marks the point at which the System begins accepting orders each night in advance of the Overnight Trading Session. Orders entered during the Order Acceptance Queueing Time will queue until the official start of the session designated in the order instruction.

Third, proposed Rule 1.5(ll) would define “Equity Data Plans” to mean the effective national market system plan(s) governing the collection, consolidation, processing, and dissemination of consolidated equity market data via the exclusive securities information processors (“SIPs”), including: (1) the Consolidated Tape Association Plan (“CTA Plan”); (2) the Consolidated

Quotation Plan (“CQ Plan”); (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”); (4) the CT Plan established by the Limited Liability Company Agreement of CT Plan LLC; and (5) any successor to the named Plan(s).

Finally, the Exchange proposes a non-substantive amendment to Rule 1.5(ii) to correct a typographical error, changing the word “Continent” to “Contingent.” As amended, Rule 1.5(ii) would define the Regular Session as “the time between the completion of the Opening Process or Contingent Open as defined in Rule 11.7 and 4:00 p.m. Eastern Time.”

Trading Rules

The Exchange proposes to amend Rules 11.1 (Hours of Trading and Trading Days), 11.6 (Definitions), 11.7 (Opening Process), 11.8 (Order Types), 11.10 (Order Execution), 11.15 (Clearly Erroneous Executions) and to adopt Rule 11.25 (Weekday Trading Pauses) to reflect necessary updates to provide for 23x5 trading functionality.

a. Rule 11.1—Hours of Trading and Trading Days

The Exchange proposes to amend Rule 11.1(a) to replace reference to the Early Trading Session with the Overnight Trading Session, and to amend Rule 11.1(a)(1) to update the order entry window and session eligibility framework to accommodate 23x5 Trading.

Under current Rule 11.1(a)(1), Users may enter orders into the System beginning at 2:30 a.m. Orders entered between 2:30 a.m. and 4:00 a.m. are not eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours, depending on the TIF instruction selected. The current rule also provides for two start times within the Early Trading Session (a 4:00 a.m. Start and a 7:00 a.m. Start) each with distinct order acceptance restrictions.

The Exchange proposes to replace this framework with a streamlined structure that reflects the introduction of the Overnight Trading Session and the expanded order entry window. As proposed, Users may enter orders into the System beginning at the Order Acceptance Queueing Time (8:55 p.m.) on each night preceding a business day through 8:00 p.m. on the same trading

³¹ See proposed Rule 11.1(b). A business day is any day the Exchange is open for trading, which includes any Monday, Tuesday, Wednesday, Thursday, and Friday, other than a holiday.

day.³² Orders entered during the Order Acceptance Queueing Time will queue until the official start of the session designated in the order instruction. This approach applies uniformly across all trading sessions (*i.e.*, the Overnight Trading Session, Pre-Opening Session, Regular Session, and Post-Closing Session) providing Members with a consistent and simplified order entry experience. The 4:00 a.m. Start and 7:00 a.m. Start construct is removed, as these designations are no longer necessary under the proposed framework.

Proposed Rule 11.1(a)(2) would provide that an order is eligible to participate in the designated trading session(s) only and may remain in effect for one or more consecutive trading sessions on a particular day. An order designated for a session that has not yet begun will be accepted into the System but will not be eligible to trade until that session commences. An order designated solely for a session that has already ended will be rejected. An order entered without a trading session designation will default to a Day³³ order, making it eligible to participate from the Overnight Trading Session through the end of Regular Trading Hours. Proposed Rule 11.1(a)(2) also permits Members to designate a specific Start Time for their orders in thirty-minute increments prior to the start of Regular Trading Hours, replacing the 4:00 a.m. Start and 7:00 a.m. Start designations with a more flexible and uniform framework. Start Times must be set to a time prior to the commencement of Regular Trading Hours and may not be designated during Regular Trading Hours. At each Start Time, orders will be handled in time sequence beginning with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.

Proposed Rule 11.1(a)(3) would specify the orders the Exchange will not accept during the Order Acceptance Queueing Time: (i) orders with a Post Only instruction; (ii) ISOs; (iii) Market Orders, other than those with a TIF instruction of RHO or a Stop Price;³⁴

(iv) orders with a Minimum Execution Quantity instruction that also include a TIF instruction of RHO; and (v) orders with a TIF instruction of IOC or FOK. These restrictions are consistent with the order type limitations currently applicable prior to the pre-market sessions and are intended to ensure orderly trading prior to the commencement of the Overnight Trading Session.

The Exchange also proposes to amend Rule 11.1(b) to define “business day” and to specify the days on which the Exchange will be open for trading under the proposed 23x5 framework. A business day is any day the Exchange is open for trading, which includes any Monday, Tuesday, Wednesday, Thursday, and Friday, other than a holiday listed below. The Exchange will not be open for business on the following holidays: New Year’s Day, Dr. Martin Luther King Jr. Day, Presidents’ Day, Good Friday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When a holiday falls on a Sunday, the Exchange will not be open for business on the following Monday, unless otherwise indicated by the Exchange. On days when the Exchange closes early (“Early Market Close”), Regular Trading Hours will be from 9:30 a.m. to 1:00 p.m. and the Post-Closing Session will be from 1:00 p.m. to 5:00 p.m. Trading shall resume with the Overnight Trading Session on any night preceding a business day. The Exchange also proposes to amend Rule 11.1(b) to provide that the Exchange will be open for the transaction of business on each business day, including the Overnight Trading Session on the preceding calendar day.

Under the proposed 23x5 framework, the trading day will be structured as follows. The Overnight Trading Session will run from 9:00 p.m. to 4:00 a.m., followed by the Pre-Opening Session from 4:00 a.m. to 9:30 a.m., Regular Trading Hours from 9:30 a.m. to 4:00 p.m., and the Post-Closing Session from 4:00 p.m. to 8:00 p.m. Between 8:00 p.m. and 9:00 p.m. each weekday, the Exchange will pause trading to conduct maintenance, testing, and processing of corporate actions (such as mergers, stock splits, and dividends) that become effective the following trading day. This

pause also provides market participants with time to process and clear trades before the start of a new trading day. For dates on which the Exchange is not open for business under Rule 11.1(b), the market closure will be effective at 8:00 p.m. on the calendar day preceding the closure date. For Early Market Close days,³⁵ the closure will instead be effective at 5:00 p.m. on the calendar day preceding the closure date. In either case, the Exchange will re-open at 9:00 p.m. on the closure date, unless the closure date is immediately followed by a non-business day, in which case the Exchange will re-open at 9:00 p.m. on the day preceding the next business day.

b. Rule 11.6(q)(2)—TIF Day Instructions

The Exchange does not propose any changes to its existing TIF instructions in connection with the Overnight Trading Session, with one exception described below. The Exchange believes the existing TIF framework otherwise accommodates the proposed 23x5 structure without modification.

The Exchange proposes a conforming amendment to the Day order TIF definition to permit acceptance of Day Orders during the Overnight Trading Session. Under the current definition, a Day Order entered “after the closing of Regular Trading Hours” is rejected. Because the Overnight Trading Session commences at 9:00 p.m. the current definition would, as written, result in the rejection of Day Orders entered during the Overnight Trading Session or during the Order Acceptance Queueing Time preceding it. This outcome is inconsistent with the proposed 23x5 framework, under which Day Orders should be eligible for entry beginning at the Order Acceptance Queueing Time and should remain eligible for execution throughout the Overnight Trading Session, Pre-Opening Session, and Regular Trading Hours. Accordingly, the Exchange proposes to amend the Day order TIF definition to provide that a Day Order entered during the Overnight Trading Session or during the Order Acceptance Queueing Time will be accepted by the Exchange and, if not executed, will expire at the end of Regular Trading Hours on the following business day. This amendment is limited to conforming the Day order definition to the expanded order entry window introduced by the proposed 23x5 framework and does not alter any other aspect of the Day order TIF instruction. For the avoidance of doubt,

³² A “trading day” refers to the 23-hour period commencing at 9:00 p.m. ET on one calendar day and ending at 8:00 p.m. ET on the next calendar day for the period from Sunday at 9:00 p.m. ET through Friday at 8:00 p.m. ET.

³³ An instruction the User may attach to an order stating that an order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. Any Day Order entered into the System before the opening for business on the Exchange as determined pursuant to Rule 11.1, or after the closing of Regular Trading Hours, will be rejected. See Exchange Rule 11.6(q)(2).

³⁴ Once the trigger price is reached during Regular Trading Hours, the order will be elected (activated).

Election results in a Market order sent to the book. See Cboe Titanium U.S. Equities FIX Specification, at 61, available at https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf.

³⁵ Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1:00 p.m. See *e.g.*, Thanksgiving Early Close and Christmas Early Close at <https://www.cboe.com/about/hours>.

orders will expire on the trading day for which they are entered; as described above, a trading day is deemed to begin at 9:00 p.m. Eastern Time on the preceding calendar day.

As amended, a Day Order entered at 9:00 p.m. on a day preceding a business day will remain eligible for execution throughout the Overnight Trading Session, Pre-Opening Session, and Regular Trading Hours on that business day, expiring at 4:00 p.m. Eastern Time that trading day.

c. Rule 11.7—Opening Process

The Exchange proposes a conforming amendment to Rule 11.7 to replace the reference to the Early Trading Session with the Overnight Trading Session in the provision governing re-openings after a halt. As amended, during the Overnight Trading Session, Pre-Opening Session, or Post-Closing Session, the Re-Opening Process will occur at the midpoint of the NBBO after one second has passed following the applicable resumption trigger. This change is non-substantive and is intended solely to reflect the replacement of the Early Trading Session with the Overnight Trading Session under the proposed 23x5 framework.

d. Rule 11.8—Order Types

The Exchange proposes conforming amendments to Rule 11.8 to replace references to the Early Trading Session with the Overnight Trading Session across each order type that currently specifies session eligibility, including Limit Orders, ISOs, MidPoint Peg Orders,³⁶ Market Maker Peg Orders,³⁷ Supplemental Peg Orders,³⁸ and MidPoint Discretionary Orders.³⁹

Outside of Regular Trading Hours, only Limit Orders are eligible for execution. Under proposed Rule 11.8(a)(6), a Limit Order may be eligible for execution during the Overnight Trading Session, Pre-Opening Session, Regular Session, Regular Trading Hours, and the Post-Closing Session. This is consistent with the other order types eligible outside of Regular Trading Hours; ISOs must be Limit Orders by definition, and Market Maker Peg Orders, Supplemental Peg Orders, and MidPoint Discretionary Orders are each expressly defined as or characterized as Limit Orders under their respective provisions.

Limit MidPoint Peg Orders, which are capped with respect to price, may be

executed during the Overnight Trading Session, Pre-Opening Session, Regular Trading Hours, and the Post-Closing Session, while Market MidPoint Peg Orders, which are uncapped with respect to price, may only be executed during Regular Trading Hours. Because a Market MidPoint Peg Order carries no price cap, it presents heightened execution risk in extended hours sessions where liquidity conditions may differ materially from those present during Regular Trading Hours and where the NBBO may be wider or less reliable. Without a limit price to constrain execution, a Market MidPoint Peg Order could execute at a price that is disadvantageous to the submitting party in a manner that is less likely to occur during Regular Trading Hours. By contrast, Limit MidPoint Peg Orders have a price cap and are non-displayed, which the Exchange views as sufficient safeguards to make them suitable for execution outside of Regular Trading Hours, consistent with the broader principle that only Limit Orders are eligible for execution outside of Regular Trading Hours under the proposed 23x5 framework. Proposed Rule 11.8(d)(4) also provides that a Minimum Execution Quantity instruction on a MidPoint Peg Order will not be applied during the Opening Process. Additionally, proposed Rule 11.8(d)(4) replaces the reference to the Early Trading Session with the Overnight Trading Session, conforming MidPoint Peg Order session eligibility to the proposed 23x5 framework.

The Exchange also proposes to amend Rule 11.8(e)(7) to replace the reference to the Early Trading Session with the Overnight Trading Session for Market Maker Peg Orders. As amended, Users may submit Market Maker Peg Orders to the Exchange starting at the beginning of the Overnight Trading Session, though such orders will not be executable or automatically priced until after the commencement of Regular Session. All remaining amendments to Rule 11.8 (including those applicable to ISOs, Supplemental Peg Orders, and MidPoint Discretionary Orders) are non-substantive and are intended solely to conform existing session eligibility provisions to the proposed 23x5 framework by replacing references to the Early Trading Session with the Overnight Trading Session.

e. Rule 11.10—Order Execution

The Exchange proposes a conforming amendment to Rule 11.10 to replace the reference to the Early Trading Session with the Overnight Trading Session in the provision governing compliance with Regulation NMS. As amended, for

any execution to occur during the Overnight Trading Session, Pre-Opening Session, or Post-Closing Session, the price must be equal to or better than the highest bid or lowest offer in the EDGX Book or as disseminated by the responsible single plan processor, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. This amendment is non-substantive and preserves the existing execution standard applicable outside of Regular Trading Hours.

f. Rule 11.15—Clearly Erroneous Executions

The Exchange proposes conforming amendments to Rule 11.15 to replace all references to the Early Trading Session with the Overnight Trading Session throughout the clearly erroneous execution framework. These amendments appear in the provisions governing review of transactions occurring outside of Regular Trading Hours, including the numerical guidelines table, the Multi-Stock Event provisions, the additional factors provision, the Outlier Transaction provision, the Reference Price provision, and the Officer Acting On Own Motion provision. In each case, the amendment substitutes “Overnight Trading Session” for “Early Trading Session” without altering the substantive standards or procedures applicable to clearly erroneous execution reviews. The Exchange notes that the numerical guidelines applicable to the Overnight Trading Session, Pre-Opening Session, and Post-Closing Session will remain the same as those currently applicable to the Early Trading Session, Pre-Opening Session, and Post-Closing Session, reflecting the Exchange’s view that the same heightened thresholds appropriate for extended hours trading remain appropriate for the Overnight Trading Session.

g. Rule 11.25—Weekday Trading Pause

The Exchange proposes to adopt new Rule 11.25 to govern the daily trading pause that will occur between the close of the Post-Closing Session and the commencement of the Overnight Trading Session on each weekday. As proposed, the Exchange will pause trading at the conclusion of the Post-Closing Session at 8:00 p.m. and resume trading with the commencement of the Overnight Trading Session at 9:00 p.m. on the day preceding the next business day. This one-hour pause is intended to provide the Exchange with time to conduct necessary maintenance and testing, and to process corporate actions, such as mergers, stock splits, and

³⁶ See Exchange Rule 11.8(d).

³⁷ See Exchange Rule 11.8(e).

³⁸ See Exchange Rule 11.8(f).

³⁹ See Exchange Rule 11.8(g). A Market Order is only eligible for execution by the System during the Regular Session. See Exchange Rule 11.8(a)(5).

dividends, that become effective the following trading day. The pause also provides market participants with time to process and clear trades before the start of a new trading day.

Proposed Rule 11.25(a)(1) provides that all orders outstanding on the EDGX Book as of 8:00 p.m. at the end of the Post-Closing Session will be cancelled. The Exchange believes it is appropriate to cancel all resting orders at the close of the Post-Closing Session each weekday to ensure that orders are not carried over into the next trading day without an explicit order instruction by a Member. This approach provides Members with a clean start to each trading day and reduces the risk of unintended executions based on stale order instructions.

Proposed Rule 11.25(a)(2) provides that the Exchange will begin accepting orders again at the Order Acceptance Queueing Time (*i.e.*, 8:55 p.m.) and will continue accepting orders through 8:00 p.m. on the following calendar day, provided the next calendar day is a business day. Orders entered during the Order Acceptance Queueing Time will queue until the commencement of the Overnight Trading Session at 9:00 p.m. Proposed Rule 11.25(a)(2) also provides that trades occurring at or after the commencement of the Overnight Trading Session at 9:00 p.m. will be assigned a trade date of the following calendar day, reflecting that the Overnight Trading Session economically belongs to the next trading day even though it commences the prior evening.

The Exchange notes that while the Order Acceptance Queueing Time applies on Sunday prior to the commencement of the Overnight Trading Session at 9:00 p.m., the one-hour trading pause described in Rule 11.25(a) does not apply on Sunday. Unlike Monday through Thursday, where trading pauses at 8:00 p.m. following the close of the Post-Closing Session and resumes at 9:00 p.m., Sunday does not follow a Post-Closing Session and therefore there is no intervening pause period. The Exchange will begin accepting orders at the Order Acceptance Queueing Time on Sunday evening and the Overnight Trading Session will commence at 9:00 p.m., marking the start of the trading week. The Exchange believes this distinction is appropriate because the operational and processing considerations that necessitate a pause between the Post-Closing Session and the Overnight Trading Session on weekdays, such as processing corporate actions and clearing end-of-day positions, are not present on Sunday.

Unlisted Trading Privileges

The Exchange proposes conforming amendments to Rule 14.1 to replace references to the Early Trading Session with the Overnight Trading Session. Specifically, the Exchange proposes to amend Rule 14.1(c)(1) to replace the reference to the "Early Trading Session (7:00 a.m.–8:00 a.m. Eastern Time)" with the "Overnight Trading Session (9:00 p.m.–4:00 a.m. Eastern Time)." The Exchange also proposes conforming amendments to Interpretations and Policies .01(a) and .01(b)(2) to replace each reference to the "Early Trading Session" with the "Overnight Trading Session." These amendments are non-substantive and are intended solely to conform the unlisted trading privileges framework to the proposed 23x5 session structure by updating the applicable session nomenclature and hours.

Risk Disclosures

The Exchange proposes to adopt new Rule 3.21(h) to establish tailored customer disclosure obligations specific to the Overnight Trading Session and Pre-Opening Session. The existing customer disclosure framework under Rule 3.21 requires Members to disclose the material trading risks associated with extended hours trading prior to accepting an order for execution in those sessions. The Exchange believes that the unique characteristics of the Overnight Trading Session and Pre-Opening Session (including the hours during which they operate, the market conditions that may be present, and the novel nature of overnight exchange trading) warrant additional disclosures beyond those currently required for other extended hours sessions. Proposed Rule 3.21(h) sets forth seven categories of risks that Members must disclose to customers in connection with trading during the Overnight Trading Session and Pre-Opening Session.

First, proposed Rule 3.21(h)(1) addresses the risk of trading during hours in which primary listing markets may not be open. Unlike the Post-Closing Session, which occurs in close proximity to Regular Trading Hours, the Overnight Trading Session and Pre-Opening Session operate during hours in which primary listing exchanges may not be conducting their own trading, regulatory surveillance, or other regulatory functions with respect to their listed securities. The Exchange believes it is important that customers understand that the regulatory infrastructure ordinarily provided by primary listing exchanges may not be available during these sessions.

Second, proposed Rule 3.21(h)(2) addresses the risk that regulatory protections available during the Overnight Trading Session and Pre-Opening Session may be more limited or different than those available during Regular Trading Hours. For example, certain volatility control mechanisms applicable to individual symbols and the broader equities market may not be available during the Overnight Trading Session and Pre-Opening Session. The Exchange believes customers should be informed of these potential gaps in regulatory protections before trading during these sessions.

Third, proposed Rule 3.21(h)(3) addresses the risk arising from limited trading alternatives during the Overnight Trading Session and Pre-Opening Session. Because the Exchange may be the only exchange trading certain securities during these hours, customers may face greater exposure to losses in the event of systems failures or other operational issues on the Exchange, as alternative execution venues may not be available.

Fourth, proposed Rule 3.21(h)(4) addresses the risks associated with near-continuous trading under the 23x5 framework. With the implementation of the Overnight Trading Session, trading on the Exchange will occur on a near-continuous basis throughout the week, with only limited breaks. This structure may present heightened risks related to system maintenance and testing, as well as the pausing and resumption of trading, as there will be fewer extended breaks during which such activities can be conducted without impacting market participants.

Fifth, proposed Rule 3.21(h)(5) addresses the risk of trading during hours in which financial market infrastructure companies are closed. Certain important financial market infrastructure providers, including other markets, banks, Fedwire Funds Service, and certain other providers of settlement services, may be closed during the Overnight Trading Session and Pre-Opening Session. Trading during hours in which the relevant clearing agency and other settlement service providers are closed may result in an increased passage of time between the execution of a transaction and its final settlement, which may expose customers to additional counterparty and settlement risk.

Sixth, proposed Rule 3.21(h)(6) addresses the risk arising from the novel nature of overnight exchange trading. Exchange-facilitated trading during overnight hours is a relatively new development in the U.S. equities market, and as such, the Overnight

Trading Session may present unforeseen risks that are not yet fully understood or anticipated. The Exchange believes it is appropriate to specifically call out the novelty of the Overnight Trading Session so that customers can make informed decisions about whether overnight trading is appropriate for them.

Seventh, proposed Rule 3.21(h)(7) provides a general catch-all disclosure acknowledging that the Overnight Trading Session and Pre-Opening Session may present additional unforeseen risks beyond those specifically enumerated in proposed Rule 3.21(h)(1) through (6). The Exchange believes this provision is appropriate given the evolving nature of extended hours trading and the potential for market conditions or operational circumstances that cannot be fully anticipated at this time.

The Exchange believes that the proposed disclosures under Rule 3.21(h) are necessary and appropriate to ensure that customers are fully informed of the unique risks presented by the Overnight Trading Session and Pre-Opening Session prior to participating in trading during those hours. The proposed disclosures are consistent with the customer protection principles underlying the existing Rule 3.21 framework and reflect the Exchange's commitment to investor protection in connection with the expansion of its trading hours under the proposed 23x5 framework.

Protections

The implementation of 23x5 Trading represents an extension of trading hours rather than a fundamental restructuring of Exchange operations or rules. With the exception of the specific amendments discussed above, the Exchange's operational processes, rule text, and surveillance programs will continue to apply in the same manner as they do today. The following EDGX rules and system features will remain unchanged and will apply in full during the Overnight Trading Session: Order Types and Order Execution; Membership Rules and Rules of Fair Practice; Market Maker Obligations and Priority of Orders; Trading Practice Rules and Disciplinary Rules and Enforcement; Opening and Closing Crosses; Clearly Erroneous Execution Protections; and Risk Settings and Fat Finger Protections.

With respect to trading halts, the Exchange's existing halt rules will apply during the Overnight Trading Session. Consistent with current practice during other extended hours sessions, the Exchange will halt trading in a security

during the Overnight Trading Session to the extent required to follow a halt imposed by the primary listing exchange for that security. To the extent a security is subject to a regulatory halt, news dissemination halt, or other trading pause imposed by the primary listing exchange or a national securities regulator, the Exchange will halt trading in that security consistent with applicable rules and regulatory requirements.

The Exchange's clearly erroneous execution rules under Rule 11.15 will apply in full during the Overnight Trading Session, as they currently apply during the Early Trading Session and other extended hours sessions. No substantive changes to those rules are proposed in connection with this filing. As such, the Exchange's Clearly Erroneous rules will continue to mirror those adopted by each national security exchange and will continue to ensure that there are consistent standards across each exchange for breaking trades, and continuing to promote the orderly and efficient operation of the equities markets.

The Exchange's existing surveillance programs and compliance infrastructure will likewise apply fully to trading in the Overnight Trading Session and the modified Pre-Opening Session. The Exchange currently operates a comprehensive regulatory program applicable to the Early Trading Session, Pre-Opening Session, Regular Trading Hours, and Post-Closing Session, encompassing a suite of automated trade surveillance tools, routine Member examinations, and an exam-based regulatory program. This regulatory program will extend to the Overnight Trading Session without modification, ensuring that Members trading during overnight hours are subject to the same level of oversight applicable to trading in other sessions.

Similarly, the Exchange's existing risk settings and controls (including single-order price and size protections and other fat finger safeguards) will remain available and operative during the Overnight Trading Session. The Exchange believes that these existing protections, taken together, provide a robust framework for managing risk during overnight trading that is consistent with the protections available during other extended hours sessions.

Contingency on Industry Readiness

As noted above, the Exchange will not implement its proposed rule changes or commence operation of the Overnight Trading Session until the Equity Data Plan readiness conditions set forth in proposed Rule 1.5(jj) have been

satisfied. Prior to commencing operation of the Overnight Trading Session, the Exchange will file a proposed rule change pursuant to Section 19(b) of the Exchange Act and the rules thereunder confirming that: (i) the Exchange is able to comply with its obligations under the Exchange Act and the rules thereunder during the Overnight Trading Session; and (ii) the Equity Data Plans are prepared to collect, consolidate, process, and disseminate quotation and transaction information at all times during the Overnight Trading Session. Upon satisfaction of the foregoing conditions, the Exchange will announce via Exchange notice the implementation date for its proposed rule changes and the go-live date for 23x5 Trading. If the Overnight Trading Session Proposed Rule Change is not filed within 18 months of the SEC's approval of this proposed rule change, the Exchange will promptly file a proposed rule change to remove the rules applicable to the Overnight Trading Session.

Impact on Fees

Any impact of the Exchange's 23x5 proposal on its fee schedule will be addressed in a subsequent fee filing.

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.⁴⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴¹ 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.

23x5 Trading Framework

The Exchange believes the proposed rule change is consistent with the Act because it would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a rules framework to support 23x5 Trading. As described above, the Exchange has observed

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

sustained and significant growth in Early Trading Session volume, with average daily volume across Cboe's U.S. equities exchanges increasing 404% between January 2022 and February 2026. The Exchange has also received consistent feedback from APAC broker-dealers that their retail investors desire greater access to the U.S. equities market during their local business hours. The Exchange believes that 23x5 Trading will benefit investors and the national market system by increasing market accessibility, promoting capital formation, and facilitating portfolio management, including for the growing number of retail investors in the Asia-Pacific region whose local business hours do not coincide with U.S. Regular Trading Hours.

The Exchange further believes the proposal is consistent with the Act because the proposed Overnight Trading Session and the modified Pre-Opening Session will operate in substantially the same manner as the Exchange's existing extended hours sessions. All order types, execution processes, membership rules, market maker obligations, priority rules, disciplinary rules, clearly erroneous execution protections, risk settings, and fat finger safeguards applicable to the Exchange's existing sessions will continue to apply in full during the Overnight Trading Session and the expanded Pre-Opening Session. The Exchange believes that applying its existing operational and regulatory framework to the Overnight Trading Session is consistent with the Act's goals of ensuring market integrity, investor protection, and fair and orderly trading. The Exchange represents that its systems have the capacity to accommodate the proposed 23x5 Trading functionality.

Session Definitions and Order Entry Framework

The Exchange believes that the proposed new definitions, including the Overnight Trading Session, Order Acceptance Queueing Time, and Equity Data Plans, would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules. The proposed Overnight Trading Session definition, anchored to the concept of a "night preceding a business day" rather than enumerated calendar days, provides a durable and flexible framework that accommodates the Exchange's trading calendar without requiring recurring conforming amendments. The proposed Order Acceptance Queueing Time definition similarly adds clarity by establishing a

defined, consistent time at which the System begins accepting orders ahead of the Overnight Trading Session each weekday evening and on Sunday nights. The Exchange believes these definitional additions facilitate the understanding of and compliance with Exchange rules, thereby removing potential confusion and promoting just and equitable principles of trade.

The Exchange believes the proposed streamlined order entry framework under Rule 11.1(a) similarly removes impediments to the mechanism of a free and open market by replacing the existing 4:00 a.m. Start and 7:00 a.m. Start construct with a uniform structure applicable across all trading sessions. The proposed trading session designation requirement under Rule 11.1(a)(2) promotes transparency and investor protection by ensuring that each order is clearly designated for the session(s) in which it will remain eligible to participate, consistent with the approach taken by other national securities exchanges that have adopted or sought to adopt extended overnight trading frameworks.⁴²

The Exchange believes that the proposed introduction of a defined term "business day" in Rule 11.1(b), together with the codification of the concept of an Early Market Close and the corresponding adjustments to the Exchange's trading calendar, is consistent with Section 6(b)(5) of the Act because these amendments remove impediments to and perfect the mechanism of a free and open market and a national market system. As proposed, a "business day" is any day the Exchange is open for trading, each Monday through Friday that is not a holiday, thereby providing a clear and predictable foundation for determining when the Overnight Trading Session will operate. This definition, which does not rely on enumerated calendar days, enhances transparency and flexibility by ensuring that the commencement of the Overnight Trading Session is tied to whether the following day is a trading day rather than to fixed days of the week. The proposed amendment also provides that the Exchange will be open for the transaction of business on each business day, including the Overnight Trading Session on the preceding calendar day, thereby confirming the full scope of Exchange operations under the 23x5 framework and providing Members with a clear and comprehensive statement of when the Exchange is open. This structure accommodates holiday

closures, holiday-observed weekends, and unforeseen non-business days without requiring further amendments to the session definition. Likewise, the proposal's integration of Early Market Close days (under which Regular Trading Hours conclude at 1:00 p.m. and the Post-Closing Session ends at 5:00 p.m., with the market closure becoming effective on the calendar day preceding the closure date) provides that the transition into the Overnight Trading Session remains orderly, predictable, and aligned with the modified market-wide trading schedule. Together, these provisions provide Members with a uniform, rules-based mechanism for determining when the Exchange will commence and pause trading under the proposed 23x5 framework, promote just and equitable principles of trade by reducing uncertainty and the risk of misaligned order entry during session transitions, and foster cooperation and coordination with other market participants and infrastructure providers by grounding the Overnight Trading Session in a clear and durable trading-day framework. Accordingly, the Exchange believes the proposed amendments are consistent with the protection of investors and the public interest because they provide predictable and transparent operational parameters for the launch and operation of the Overnight Trading Session.

Contingency on Equity Data Plan Readiness

The Exchange believes that conditioning commencement of the Overnight Trading Session on satisfaction of the Equity Data Plan readiness requirements set forth in proposed Rule 1.5(ji) is consistent with the Act and, in particular, with the Act's requirements that exchange rules be designed to prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities transactions, and perfect the mechanism of a free and open market and a national market system. As the Commission has recognized in approving similar conditions for other exchanges seeking to operate overnight sessions, this requirement is designed to reasonably ensure that consolidated quotation and transaction data are provided in a manner consistent with existing extended hours sessions, and that trading will not occur until the infrastructure necessary to support fair and orderly markets during overnight

⁴² See NYSE Arca Rule 7.34–E(T); Nasdaq Rule Equity 1, Section 1(a)(19).

hours is in place.⁴³ Prior to commencing operation of the Overnight Trading Session, the Exchange will confirm via a subsequent Section 19(b) filing that the Equity Data Plans are prepared to collect, consolidate, process, and disseminate quotation and transaction information at all times during the Overnight Trading Session and that the Exchange is able to comply with its obligations under the Act during those hours. The Exchange believes this approach promotes transparency because trading will not commence until these conditions are verified and publicly filed.

Order Type Eligibility

The Exchange believes the proposed conforming amendments to its order type rules are consistent with the Act because they apply the same limitations on order type availability outside of Regular Trading Hours that exist today to the Overnight Trading Session, thereby ensuring a consistent and investor-protective trading environment across all extended hours sessions. Restricting order eligibility during the Overnight Trading Session and Pre-Opening Session to Limit Orders reflects the reduced liquidity conditions characteristic of extended hours trading and is consistent with the approach taken by other national securities exchanges.⁴⁴ The Exchange believes restricting MidPoint Peg Orders that are uncapped with respect to price to Regular Trading Hours only further protects investors by limiting unpriced execution risk to the session in which price discovery mechanisms and liquidity conditions are most robust.

Weekday Trading Pause

The Exchange believes the proposed Weekday Trading Pause under new Rule 11.25 is consistent with the Act because it promotes the protection of investors and the public interest by providing the Exchange and market participants with a defined period each weekday to conduct maintenance and testing, process pending corporate actions, and clear end-of-day positions before a new trading day commences. The cancellation of all resting orders at the end of the Post-Closing Session at 8:00 p.m. each weekday promotes investor protection by ensuring that Members

must affirmatively re-enter orders for the following trading day, reducing the risk of unintended executions based on stale order instructions.

Customer Disclosures

The Exchange believes proposed Rule 3.21(h) is consistent with the Act and, in particular, with the Section 6(b)(5) requirement that exchange rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The seven categories of risk disclosure required by proposed Rule 3.21(h) (addressing the absence of primary listing market oversight during overnight hours, the potential for more limited regulatory protections, limited trading alternatives, risks associated with near-continuous trading, the closure of financial market infrastructure companies during overnight hours, the novel nature of overnight exchange trading, and potential unforeseen risks) are tailored to the specific characteristics of the Overnight Trading Session and the expanded Pre-Opening Session, and are substantially similar to the disclosures required by the Commission in approving the rules of other national securities exchanges operating on an extended overnight basis.⁴⁵ The Exchange believes that requiring these disclosures will enhance transparency and enable investors to make informed decisions about whether participating in the Overnight Trading Session or the Pre-Opening Session is appropriate for them, consistent with the investor protection objectives of the Act. These proposed disclosures are also consistent with FINRA Rule 2265, which separately requires brokers to affirmatively disclose to investors that extended hours trading carries greater risks than trading during Regular Trading Hours.

Market Surveillance

The Exchange believes that extending its existing surveillance programs and compliance infrastructure to the Overnight Trading Session is consistent with the Act because it provides that trading during overnight hours is subject to the same comprehensive regulatory oversight applicable to trading during other sessions, including automated trade surveillance, routine Member examinations, and an exam-

based regulatory program. Exchange staff will be available during the Overnight Trading Session to maintain a fair and orderly market, issue necessary rulings, implement trading halts, and take any other action that may be necessary, consistent with the Exchange's obligations under the Act and its rules.

Competitive Considerations

The Exchange also believes the proposal is consistent with the Act because it will foster competition by providing investors with access to another regulated national securities exchange that offers trading during overnight hours, consistent with similar proposals approved by the Commission for other national securities exchanges.⁷ The Exchange operates in a highly competitive market in which investors seeking overnight access to U.S. equities currently resort to alternative trading systems, foreign securities markets, and other venues. Enabling 23x5 Trading on the Exchange will allow it to compete for order flow from these investors, which the Exchange believes will increase market accessibility, promote capital formation, and facilitate portfolio management.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will, in fact, enhance competition by providing investors with access to an additional regulated national securities exchange offering trading during overnight hours.

The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Overnight Trading Session will be available to all Members on an equal and non-discriminatory basis. All Members will have the same opportunity to enter orders, access liquidity, and participate in trading during the Overnight Trading Session under the same rules, order type eligibility requirements, and session designation framework applicable to all other Exchange trading sessions. The proposed customer disclosure requirements under Rule 3.21(h) will similarly apply uniformly to all Members that accept orders for execution during the Overnight Trading Session and Pre-Opening Session, ensuring that all customers receive

⁴³ See Securities Exchange Act Release No. 101777 (November 27, 2024), 89 FR 97092, 97105 (December 6, 2024) (approving application of 24X National Exchange, LLC); Securities Exchange Act Release No. 102400 (February 11, 2025), 90 FR 9794 (February 18, 2025) (approving SR-NYSEArca-2024-89).

⁴⁴ See NYSE Arca Rule 7.34-E(T)(c); Nasdaq Rule 4702.

⁴⁵ See 24X Rule 3.21(g) & (i)(1)-(5); NYSE Arca Rule 7.34-E(T)(d)(3)(viii)-(xiii); Nasdaq Rule Equity 2, Section 20(8)(A)-(G).

consistent information about the risks associated with trading during those hours regardless of which Member they use. The proposed rule change does not create any special rights, preferences, or advantages for any particular class of Member or market participant.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change will promote intermarket competition by enabling the Exchange to compete with other national securities exchanges and trading venues that currently offer, or are in the process of offering, extended overnight trading in U.S. equity securities. Investors currently seeking overnight access to U.S. equities may resort to alternative trading systems, foreign securities markets, or other off-exchange venues. By enabling 23x5 Trading on a regulated national securities exchange, the Exchange's proposal provides investors with a regulated, transparent, and competitive alternative to these venues, which the Exchange believes will benefit the national market system.

The Exchange notes that its proposal is substantively consistent with similar overnight trading proposals that the Commission has previously approved for other national securities exchanges. The Exchange does not believe that its proposal confers any competitive advantage on EDGX relative to other exchanges that have received or are seeking approval for similar frameworks. Rather, the Exchange's proposal places it on equal competitive footing with those venues, which the Exchange believes is necessary and appropriate in furtherance of the purposes of the Act.

Furthermore, the Exchange's proposal to condition commencement of the Overnight Trading Session on satisfaction of the Equity Data Plan readiness requirements provides that 23x5 Trading will not commence until the consolidated data infrastructure necessary to support a fair, transparent, and competitive overnight trading market is in place. The Exchange believes this condition serves the interests of the national market system as a whole and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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. Discussion and Commission Findings

The Commission finds that the Amended Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴⁶ In particular, the Commission finds that the Amended Proposal is consistent with section 6(b)(5) of the Act,⁴⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to extend its hours of operation to include an Overnight Trading Session, which is modeled on the Exchange's rules for the Exchange's Pre-Opening Session and Post-Closing Session, as well as rules approved by the Commission for similar sessions on other national securities exchanges.⁴⁸ The Exchange also proposes to eliminate the Early Trading Session, which operated from 4:00 a.m. to 8:00 a.m. and extend the Pre-Opening Session, which operated from 8:00 a.m. to 9:30 a.m. As proposed the Pre-Opening Session will operate from 4:00 a.m. to 9:30 a.m. Accordingly, the Exchange will operate four individual trading sessions—the Overnight Trading Session from 9:00 p.m. to 4:00 a.m. on any day preceding a business day, and the Pre-Opening Session from 4:00 a.m. to 9:30 a.m., Regular Trading Hours

from 9:30 a.m. to 4:00 p.m., and the Post-Closing Session from 4:00 p.m. to 8:00 p.m., Monday through Friday.

The Exchange proposes Rule 11.25 to require weekday trading pauses. Between the end of the Post-Closing Session and the beginning of the Overnight Trading Session, *i.e.*, Monday through Thursday between 8:00 p.m. and 9:00 p.m., the Exchange proposes to pause trading to conduct maintenance, testing, and processing of corporate actions (such as mergers, stock splits, and dividends). Orders on the EDGX Book as of 8:00 p.m. will be cancelled. The Exchange will begin accepting orders at 8:55 p.m., at the Order Acceptance Queueing Time.

The Commission received a comment letter in support of the proposed rule change.⁴⁹ The commenter stated that the "Commission should approve EDGX's Proposal, as it is generally consistent with other exchange plans to expand trading hours and harmonizes the definition of the trading day."⁵⁰ The commenter also requested that the Exchange clarify whether it would "run the same systems and technologies in the day versus night."⁵¹ The Exchange responded that it will "run the same systems and technologies across all proposed trading sessions."⁵² In addition, the commenter questioned whether the Exchange's proposal to accept orders at 8:55 p.m. would reduce the one-hour trading pause for system maintenance by five minutes and place the Exchange "out of synch" with the other national securities exchanges that have been approved for overnight trading.⁵³ The Exchange responded that it did not believe that its proposed Order Acceptance Queueing Time (1) will reduce its ability to conduct necessary maintenance and testing, and process corporate actions, or (2) is inconsistent with the "emerging industry standard" to pause trading between 8 p.m. and 9 p.m.⁵⁴ The Exchange stated that the Order Acceptance Queueing Time will not involve trading and is being offered as an optional feature to Exchange participants that may wish to enter orders just prior to the start of the

⁴⁶ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁷ 15 U.S.C. 78f(b)(5).

⁴⁸ See Securities Exchange Act Release No. 101777 (Nov. 27, 2024), 89 FR 97092, 97105 (Dec. 6, 2024) (approving application of 24X National Exchange, LLC) ("24X Approval Order"); Securities Exchange Act Release No. 102400 (Feb. 11, 2025), 90 FR 9794 (Feb. 18, 2025) (approving SR-NYSEArca-2024-89) ("NYSE Arca approval Order"); Securities Exchange Act Release No. 105199 (Apr. 10, 2026), 91 FR 20222 (Apr. 15, 2026) (approving SR-Nasdaq-2025-109) ("Nasdaq Approval Order").

⁴⁹ See Letter from Katie Kolchin, CFA Managing Director, Head of Equity & options Market Structure, and Gerald O'Hara, Vice President, Assistant General Counsel, SIFMA, dated Apr. 16, 2026 ("SIFMA Letter").

⁵⁰ See SIFMA Letter at 1.

⁵¹ See SIFMA Letter at 5.

⁵² See Letter from Matthew Iwamaye, Vice President, Associate General Counsel, Cboe Global Markets, Inc., dated May 29, 2026 ("Exchange Response Letter").

⁵³ See SIFMA Letter at 5, *supra* note 49.

⁵⁴ See Exchange Response Letter at 3, *supra* note 52.

Overnight Trading Session for operational reasons, such as managing message traffic and ensuring orderly submission of orders. The Exchange also stated that the Order Acceptance Queueing Time “allows for a more orderly opening process.”⁵⁵ In addition, the Exchange stated that information about orders accepted during the Order Acceptance Queueing Time would not be disseminated to the Equity Data Plans or to the Exchanges proprietary data feeds until the market opens at 9:00 p.m. Finally, the Exchange noted that other exchanges have different trading frameworks, and that one exchange will begin accepting orders at 8:59 p.m. so that the Order Acceptance Queueing Time is not outside of industry norms.⁵⁶

The Exchange will not commence operation of the Overnight Trading Session prior to the filing of a proposed rule change to confirm its and the Equity Data Plans’ readiness. Specifically, Exchange Rule 1.5(jj) requires the Exchange to file a proposed rule change, pursuant to section 19(b) and the rules thereunder, to amend its rules confirming that the Exchange is able to comply with its obligations under the Act during the Overnight Trading Session and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information during that time period.

The Exchange rule requiring the operation of the Equity Data Plans during the Overnight Trading Session is designed to ensure that consolidated quotation and transaction information are provided in a manner that is consistent with the existing extended hours sessions on exchanges, including EDGX. The Exchange rules for the Overnight Trading Session are designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest. Further, the Amended Proposal will foster competition by introducing another trading venue during these trading hours. The Commission has approved other national securities exchanges’ rules to introduce overnight trading hours with substantively identical provisions.⁵⁷

In addition, the Exchange proposes to add customer risk disclosures specifically related to the Overnight Trading Session and Pre-Opening Session,⁵⁸ and to only permit Limit

Orders outside of the Regular Trading Hours (*i.e.*, unpriced orders are ineligible for use outside of Regular Trading Hours).⁵⁹ Finally, the Exchange, like other national securities exchanges, states that its rules and processes related to trading halts, Clearly Erroneous filings, and surveillance during the Overnight Trading Session will operate in a manner that is consistent its current extended hours trading sessions. In addition, the Exchange states that its rules and system features will remain unchanged and will apply in full during the Overnight Trading Session, including Order Types and Order Execution; Membership Rules and Rules of Fair Practice; Market Maker Obligations and Priority of Orders; Trading Practice Rules and Disciplinary Rules and Enforcement; Opening and Closing Crosses; Clearly Erroneous Execution Protections; and Risk Settings and Fat Finger Protections.

Accordingly, the Amended Proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in NMS stocks, and perfect the mechanism of a free and open market and a national market system. Moreover, the Amended Proposal will foster competition by introducing another trading venue during the overnight hours. As amended, the Exchange’s rules for the Overnight Trading Session are designed to increase transparency and enhance customer risk disclosures such that the Exchange will operate the Overnight Trading Session in a manner that is consistent with the regulatory framework of the extended hours sessions of other national securities exchanges.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views and

arguments concerning whether the proposed rule change, as amended by Amendment No. 1, 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-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2026-019 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-2026-019. 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-2026-019 and should be submitted on or before June 24, 2026.

V. Accelerated Approval of Proposed Rule Change, as Amended by Amendment No. 1

The Commission finds good cause to approve the Amended Proposal prior to the thirtieth day after the date of publication of the notice of filing of Amendment No. 1 in the **Federal Register**. The Amended Proposal is substantially similar to the approved rules of other national securities exchanges.⁶⁰ Amendment No. 1 is substantially similar to the Notice with certain revisions that clarify when the Exchange would be open for trading and to distinguish the terms “business day” and “trading day”, particularly within the context of the use Day Orders that may be entered during the Overnight Trading Session.

⁶⁰ See 24×Approval Order, NYSE Arca Approval Order, and Nasdaq Approval Order, *supra* note 48.

⁵⁵ See Exchange Response Letter, *supra* note 52 at 3.

⁵⁶ See Exchange Response Letter, *supra* note 52 at 3.

⁵⁷ See 24×Rule 1.5(c), NYSE Arca Rule 7.34-E, and Nasdaq Rule Equity 1, Sec. 1(a)(19).

⁵⁸ See proposed Exchange Rule 3.21(h).

⁵⁹ See Exchange Rule 11.8(a)(6) (stating that a Market Order is only eligible for execution by the System during the Regular Session). See also Exchange Rule 11.1(a)(3). In addition, under proposed Rule 11.8(b)(6), a Limit Order may be eligible for execution during the Overnight Trading Session, Pre-Opening Session, Regular Session, Regular Trading Hours, and the Post-Closing Session. Other order types eligible for execution outside of Regular Trading Hours must be Limit Orders, including ISOs, Market Maker Peg Orders, Supplemental Peg Orders, and MidPoint Discretionary Orders. The Exchange proposes to amend Rule 11.8(d)(4) to require MidPoint Peg Orders executed outside of Regular Trading Hours to be Limit Orders.

In light of the previous Commission orders approving other national securities exchanges' rules to allow trading during the times that coincide with the Overnight Trading Session, and the substantive similarity of the Exchange's Amended Proposal to existing exchange rules, Amendment No. 1 does not raise any new or novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁶¹ to approve the Amended Proposal, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 thereof in the **Federal Register**.

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.⁶²

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶³ that the proposed rule change (SR-CBOEEDGX-2026-019) be, as amended by Amendment No. 1, be, and is hereby, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁴

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105579; File No. SR-CboeBZX-2026-043]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 11.26(a)

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 2026, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 BZX Exchange, Inc. ("BZX" or the "Exchange") proposes to update Rule 11.26(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the planned operation of the Texas Stock Exchange LLC ("TXSE") as a registered national securities exchange⁵ beginning between July 2, 2026, and July 17, 2026.⁶ The text of the proposed rule change is provided in Exhibit 5.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update Rule 11.26(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of the TXSE as a registered national securities exchange.

On September 30, 2025, the Commission approved TXSE's application to register as a national securities exchange.⁷ As part of its transition to exchange status, TXSE announced that it plans to commence trading on its exchange between July 2, 2026 and July 17, 2026.⁸ The Exchange, therefore, proposes to update Rule 11.26(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of TXSE as a registered national securities exchange beginning between July 2, 2026 and July 17, 2026. Specifically, the Exchange proposes to amend Rule 11.26(a) to include TXSE by stating it will utilize TXSE market data from the Consolidated Quotation System ("CQS")/UTP Quotation Data Feed ("UQDF") for purposes of order handling, routing, execution, and related compliance processes.

Additionally, on January 29, 2026, Nasdaq BX filed with the Commission a proposal to convert from a corporation organized under the laws of the state of Delaware to one organized under the laws of the state of Texas and changed its name from Nasdaq BX, LLC to Nasdaq Texas, LLC.⁹ The Exchange accordingly proposes a conforming change to its rules to replace the name of Nasdaq BX with Nasdaq Texas. Specifically, the Exchange proposes to replace one reference to "BX" in Rule 11.26(a) with "Texas."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 104146 (September 30, 2025), 90 FR 47880 (October 2, 2025).

⁶ See Member Readiness and Launch Guide, dated December, 2025 (<https://www.txse.com/trading-membership/member-readiness-and-launch-guide>) (stating that TXSE anticipates that trading will commence between July 2, 2026–July 17, 2026).

⁷ *Supra* note 4.

⁸ *Supra* note 5.

⁹ See Securities Exchange Act Release No. 104736 (January 29, 2026), 91 FR 4980 (February 3, 2026) (SR-BX-2026-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Repeal the Restated Certificate of Incorporation and Adopt a Certificate of Formation and Company Agreement).

⁶¹ 15 U.S.C. 78s(b)(2).

⁶² 15 U.S.C. 78f(b)(5).

⁶³ 15 U.S.C. 78s(b)(2).

⁶⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update Exchange Rule 11.26(a) to include TXSE and reference Nasdaq Texas will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

In addition, the proposed amendments would reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand, and comply with the Exchange's rules. The Exchange also believes that the proposed amendments remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance

of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule changes may become operative upon filing. In the filing, the Exchange stated it is proposing these changes to reflect the launch of TXSE as a national securities exchange and reflect the name change of Nasdaq BX to Nasdaq Texas that will allow the Exchange to identify on a market-by-market basis all the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The

Commission has published a similar prior proposed rule change by the Exchange to disclose via its rules the data feeds it currently utilizes for order handling, routing, execution, and related compliance processes.¹⁶ The proposed rule changes do not raise any novel issues, and waiver of the operative delay allows for the immediate clarification of the Exchange's rules to reflect these changes. Therefore, waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁷

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-CboeBZX-2026-043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2026-043. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities Exchange Act Release No. 104077 (September 25, 2025), 90 FR 46944 (September 30, 2025) (SR-CboeEDGX-2025-074).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2026-043 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0636]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 0-2 Under the Investment Company Act of 1940, General Requirements of Papers and Applications

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 ("SEC" or "Commission") is soliciting comments on the proposed collection of information.

Several sections of the Investment Company Act of 1940 ("Act" or "Investment Company Act")¹ give the Securities and Exchange Commission ("Commission") the authority to issue orders granting exemptions from the Act's provisions. The section that grants broadest authority is section 6(c), which provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Investment Company Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act.² Congress enacted section 6(c) to give the Commission the flexibility to address unforeseen or changed circumstances in the investment company industry. Rule 0-2 under the Investment Company Act,³ entitled "General Requirements of Papers and Applications," prescribes general instructions for filing an application seeking exemptive relief with the Commission.

Rule 0-2(c)(1) requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0-2(c)(1) requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0-2 must be verified by the person executing the application by executing an instrument in substantially the form specified in the rule. Each application subject to rule 0-2 must state the reasons why the applicant is deemed to be entitled to the action requested, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Electronic filing of all applications for orders under the Investment Company Act is mandatory. Each application subject to rule 0-2 is a one-time request and the rule itself does not impose any ongoing obligations or burdens on the part of an applicant. Compliance with rule 0-2 is required to obtain or retain benefits.

We estimate that approximately 139 registrants use rule 0-2 to make

exemptive applications.⁴ Based on conversations with fund representatives and the Commission's experience with the use of rule 0-2, we estimate that the reporting burden of compliance with rule 0-2 is approximately 20 hours per respondent. This time is spent, for example, preparing the application to submit to the Commission. Accordingly, we calculate the total estimated annual internal burden of complying with rule 0-2 to be approximately 2,780 hours. We estimate the annual external costs to be \$10,341,600. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC's estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the 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 August 3, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: June 1, 2026.

Sherry R. Haywood,
Assistant Secretary.

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⁴ This estimate is based on the annual average of the number of total exemptive applications for the three year period ended December 2025 (1,251 applications/3 = 417), of which approximately 2/3 are amendments (417 × (2/3) = 139 new exemptive applications).

¹⁸ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-6(c).

³ 17 CFR 270.0-2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105582; File No. SR–NASDAQ–2025–085]

Self-Regulatory Organizations; Nasdaq Stock Market LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the iShares Bitcoin Premium Income ETF Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)

May 29, 2026.

I. Introduction

On September 30, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of the iShares Bitcoin Premium Income ETF (“Trust”) under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares). ³ The proposed rule change was published for comment in the **Federal Register** on October 2, 2025. ⁴ On May 7, 2026, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original proposed rule change in its entirety, and on May 8, 2026, the Commission published notice of the proposed rule change, as modified by Amendment No. 1 (“Proposal”). ⁵ This order approves the Proposal on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Capitalized terms not defined herein are defined in the Exchange’s rules.

⁴ See Securities Exchange Act Release No. 104148 (Sept. 30, 2025), 90 FR 47846. On November 3, 2025, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. See Securities Exchange Act Release No. 104173, 90 FR 57424 (Nov. 17, 2025). On December 16, 2025, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change. See Securities Exchange Act Release No. 104414, 90 FR 59600 (Dec. 19, 2025). On March 10, 2026, the Commission designated a longer period for Commission action on the proposed rule change. See Securities Exchange Act Release No. 104962, 91 FR 12466 (Mar. 13, 2026) (designating May 30, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change).

⁵ See Securities Exchange Act Release No. 105424, 91 FR 27097 (May 13, 2026) (“Amendment No. 1”). The Commission has received no comments on the Proposal.

II. Description of the Proposal

As described in more detail in Amendment No. 1, ⁶ the Exchange proposes to list and trade the Shares of the Trust under Nasdaq Rule 5711(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

According to the Exchange, the Trust seeks to reflect generally the performance of the price of bitcoin while providing premium income through an actively managed strategy of writing (selling) call options on iShares Bitcoin Trust ETF (“IBIT”) (such options, “IBIT options”) and, from time to time, on indices that track spot bitcoin exchange-traded products, including IBIT (such options, “index options”). ⁷ The Trust will be actively-managed ⁸ and the assets of the Trust will consist of bitcoin, as well as shares of IBIT, and cash, including premiums associated with written options. ⁹ All options written by the Trust will be U.S. exchange-listed. ¹⁰ The Exchange states that it is submitting the Proposal because the Trust will be actively managed; however, it will meet all of the other requirements under the generic listing standards for Commodity-Based Trust Shares set forth in Nasdaq Rule 5711(d). ¹¹

⁶ See Amendment No. 1, *supra* note 5.

⁷ See *id.* at 27098. The sponsor of the Trust is iShares Delaware Trust Sponsor LLC (“Sponsor”), an indirect subsidiary of BlackRock, Inc. The Trust will operate pursuant to a trust agreement between the Sponsor, a third party as the trustee of the Trust, and Wilmington Trust, National Association, as Delaware trustee. Coinbase Custody Trust Company, LLC will be responsible for the custody of the Trust’s bitcoin. See *id.*

⁸ See *id.* BlackRock Financial Management, Inc., an affiliate of the Sponsor, is the investment advisor for the Trust (“Advisor”). See *id.* The Exchange states that the Advisor is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. See *id.* at 27098 n. 11.

⁹ See *id.* at 27098. The Exchange states that the Trust is not an investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”), and, in accordance therewith, will not own or acquire securities in excess of 40% of the value of the Trust’s total assets (excluding Government Securities (as defined in the 1940 Act) and cash items) on an unconsolidated basis. See *id.*

¹⁰ See *id.* at 27099. The Exchange states that the Trust will primarily write IBIT options and, in limited circumstances, will write index options. The Exchange further states that IBIT options may be standardized options or flexible exchange (“FLEX”) options, while index options will be standardized options. The Trust’s IBIT holdings would be used to settle standardized IBIT options; either the Trust’s IBIT holdings or cash holdings would be used to settle FLEX IBIT options; and the Trust’s cash holdings would be used to settle index options, if, in any case, those written options positions are exercised. See *id.*

¹¹ See *id.* at 27098. See also Securities Exchange Act Release No. 103995 (Sept. 17, 2025), 90 FR 45414 (Sept. 22, 2025) (SR–NASDAQ–2025–056; SR–CboeBZX–2025–104; SR–NYSEARCA–2025–54)

III. Discussion and Commission Findings

After careful review, the Commission finds that the Proposal is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange. ¹² In particular, the Commission finds that the Proposal is consistent with Section 6(b)(5) of the Act, ¹³ which requires, among other things, that the Exchange’s rules be designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest;” and with Section 11A(a)(1)(C)(iii) of the Act, ¹⁴ which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Exchange has represented that the Trust will meet all the requirements set forth in Nasdaq Rule 5711(d) except that the Trust will be actively managed. ¹⁵ The Commission has previously found that the requirements set forth in Nasdaq Rule 5711(d) for the generic listing of Commodity-Based Trust Shares that are based on a reference asset(s) or index are consistent with the Act. ¹⁶ The Commission has stated in the context of exchange traded funds (“ETFs”) registered under the

(Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to Adopt Generic Listing Standards for Commodity-Based Trust Shares) (“Generics Approval Order”).

¹² In approving the Proposal, the Commission has considered the Proposal’s impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k–1(a)(1)(C)(iii).

¹⁵ See *supra* note 11. Nasdaq Rule 5711(d)(iii)(A) provides that Commodity-Based Trust Shares eligible to list and trade pursuant to Rule 19b–4(e) (*i.e.*, without a rule filing pursuant to Section 19(b) of the Act) must be “designed to reflect the performance of one or more reference assets or an index of reference assets, less expenses and other liabilities.” Thus, Nasdaq Rule 5711(d) precludes actively managed products from being eligible for generic listing under the rule.

¹⁶ See Generics Approval Order. Among other things, the Commission found that the portfolio holding eligibility requirements help to ensure the availability of information necessary to aid in the detection and deterrence of potential manipulations and other trading abuses, thereby making the Commodity-Based Trust Shares less readily susceptible to fraud and manipulation. See *id.* at 45418 and 45418 n.72. In addition, the Commission found that the website disclosure requirements will facilitate transparency with respect to the Commodity-Based Trust Shares and diminish the risk of manipulation or unfair informational advantage, consistent with the maintenance of fair and orderly markets and investor protection. See *id.* at 45420.

1940 Act that the mere addition of active management to a portfolio that would otherwise qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation or the availability of arbitrage between the ETF and its underlying portfolio.¹⁷ This principle holds true for Commodity-Based Trust Shares as well. As the Commission stated in the Generics Approval Order, consistently applying listing standards across products with economic exposures to the same underlying commodities levels the playing field between issuers, which should promote competition and would more readily afford investors greater investment options.¹⁸

Nevertheless, Nasdaq Rule 5711(d) does not currently contemplate the listing and trading of actively managed products and, therefore, certain provisions are only relevant to index-based products and do not contemplate active management.¹⁹ To address this, the Exchange has included additional representations in the Proposal to reflect that the Trust is actively managed. The Commission finds that the requirements set forth in Nasdaq Rule 5711(d), coupled with the additional representations made by the Exchange in the Proposal with respect to the listing and trading of the Shares, are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²⁰

First, the Exchange has represented in the Proposal that it will implement

additional firewall requirements with respect to the Advisor (or any future advisor) and its personnel to reflect that the Trust is actively managed rather than index-based.²¹ In particular, the Exchange represents in the Proposal that if the current Advisor or any new advisor of the Trust is or becomes affiliated with a broker-dealer, it will erect and maintain a "firewall" between the advisor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Trust's portfolio.²² In addition, the current Advisor and any new advisor of the Trust must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the advisor and any person associated with the advisor.²³ Moreover, any personnel or person associated with the Advisor or any new advisor who make decisions pertaining to the Trust's portfolio must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Trust's portfolio.²⁴ Finally, any institution or reporting service that provides information relating to the Trust's portfolio²⁵ must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the actual components of the Trust's portfolio.²⁶ These additional requirements relating to firewalls and procedures are substantively identical to Nasdaq's rules governing the listing and trading of actively managed exchange-traded funds,²⁷ and apply in addition to what

is already required under Nasdaq Rule 5711(d)(x) and the Act and respective rules and regulations thereunder. Such requirements collectively provide additional protection against the potential misuse of material, non-public information relating to the Trust's actively managed portfolio. The Commission finds that the proposed additional requirements relating to firewalls and procedures, combined with the requirements of Nasdaq Rule 5711(d)(x), are designed to prevent fraudulent and manipulative acts and practices and to protect investors, consistent with Section 6(b)(5) of the Act.²⁸

Second, while the Trust will be subject to the trading halt requirements of Nasdaq Rule 5711(d)(ix), the Exchange has also represented in the Proposal that if the Exchange becomes aware that the Trust's portfolio holdings are not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the Trust's portfolio holdings are available to all market participants.²⁹ This additional trading halt requirement is substantively identical to Nasdaq's rule governing the listing and trading of actively managed exchange-traded funds,³⁰ and applies in addition to what is already required under Nasdaq Rule 5711(d)(ix). This additional trading halt requirement will help to ensure that all market participants have transparency relating to the Trust's underlying portfolio, which information is key to pricing the Shares, and that no market participant has an unfair informational advantage. Ensuring such transparency relating to the Trust's underlying portfolio for all market participants will help facilitate a fair and orderly market for the Shares, as well as help to ensure that the Shares are not susceptible to manipulation. Accordingly, consistent with the requirement of Section 6(b)(5) of the Act³¹ that an Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market, the additional trading halt requirement combined with the existing

information relating to Exchange Traded Fund Shares series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares.

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ See Amendment No. 1 at 27102.

³⁰ See Nasdaq Rule 5735(d)(2)(D) (Managed Fund Shares).

³¹ 15 U.S.C. 78f(b)(5).

¹⁷ See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698, 49702 (July 28, 2016) (SR-BATS-2015-100) (Order Approving Generic Listing Standards for Managed Fund Shares); and 78397 (July 22, 2016), 81 FR 49320, 49324-25 (July 27, 2016) (SR-NYSEArca-2015-110) (Order Approving Generic Listing Standards for Managed Fund Shares).

¹⁸ See Generics Approval Order at 45419.

¹⁹ See Nasdaq Rules 5711(d)(viii)(B)(2) and 5711(d)(ix)(A)(1), requiring the Exchange to initiate delisting procedures and halt trading if the value of the underlying reference asset(s) or index is not made widely available on at least a 15-second basis from a source unaffiliated with the sponsor or the trust; Nasdaq Rule 5711(d)(x)(1), requiring that if the value of a Commodity-Based Trust Share is based on an index that is maintained by a broker-dealer, the broker-dealer erect and maintain a firewall around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index; and Nasdaq Rule 5711(d)(x)(2), requiring that any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Amendment No. 1 at 27102-3.

²² See *id.* at 27102.

²³ See *id.* at 27102-3.

²⁴ See *id.* at 27102.

²⁵ See *infra* note 27 discussing procedure requirements with respect to the "Reporting Authority" for Exchange Traded Fund Shares listed on the Exchange.

²⁶ See Amendment No. 1 at 27102.

²⁷ See Nasdaq Rule 5735(g) (Managed Fund Shares) (setting forth firewall and procedure requirements that apply to the investment adviser to the investment company issuing Managed Fund Shares and to personnel who make decisions on the investment company's portfolio composition). See also Nasdaq Rules 5704(b)(1)(B)(i) (Exchange Traded Fund Shares) (setting forth firewall and procedure requirements that apply to the investment adviser to an Exchange Traded Fund and to personnel who make decisions on the Exchange Traded Fund's portfolio composition) and 5704(b)(1)(B)(ii) (setting forth procedure requirements that apply to the "Reporting Authority" that provides information relating to the Exchange Traded Fund's portfolio). Nasdaq Rule 5704(a)(1)(C) defines "Reporting Authority" to mean Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting

halt requirements of Nasdaq Rule 5711(d)(ix) are reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, and to ensure fair and orderly markets for the Shares.

Apart from being actively managed, the Shares must meet all the requirements for initial and continued listing under Nasdaq Rule 5711(d). The Shares will be subject to the rules and procedures of the Exchange that currently govern the trading of equity securities on the Exchange.³² All statements and representations contained in the Proposal regarding, among others things, the description of the Trust's holdings, limitations on holdings, dissemination of holdings, and the applicability of the Exchange's listing rules specified in the Proposal, will constitute continued listing requirements.³³ Moreover, the Trust must notify the Exchange of any failure by the Trust to comply with the continued listing requirements.³⁴ Pursuant to obligations under Section 19(g)(1) of the Act,³⁵ the Exchange will surveil for compliance with the continued listing requirements; and if the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures.³⁶

For the reasons discussed above, the Commission finds that the Proposal is consistent with the Act.³⁷

IV. Accelerated Approval of the Proposal

The Commission finds good cause to approve the Proposal prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1³⁸ in the **Federal Register**. Amendment No. 1 clarified the description of the Trust and its permitted investments, further described the terms of the Trust, including additional trading halt and firewall requirements, and conformed various representations in the amended filing to the requirements of Nasdaq Rule 5711(d) for Commodity-Based Trust Shares.

Amendment No. 1 does not raise any novel regulatory issues. The changes assist the Commission in evaluating the

Proposal and in determining that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, as discussed above. The Commission finds that Amendment No. 1 is reasonably designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest; and, it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁹ to approve the Proposal on an accelerated basis prior to the thirtieth day after publication of notice of filing of Amendment No. 1 in the **Federal Register**.

V. Conclusion

This approval order is based on all of the Exchange's representations and descriptions in the Proposal, which the Commission has evaluated as discussed above.⁴⁰ For the reasons set forth above, the Commission finds, pursuant to Section 19(b)(2) of the Act,⁴¹ that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Act.⁴²

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴³ that the proposed rule change, as modified by Amendment No. 1 (SR-NASDAQ-2025-085) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11034 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ In addition, the Shares of the Trust must comply with the requirements of Nasdaq Rule 5711(d) to be listed and traded on the Exchange on an initial and a continuing basis, except that the Trust will be actively managed.

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁴³ 15 U.S.C. 78s(b)(2).

⁴⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105584; File No. SR-GIX-2026-01]

Self-Regulatory Organizations; Green Impact Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 11.180 and 14.003 To Conform With an Amendment to the Definition of a Round Lot Under Rule 600 of Regulation NMS

May 29, 2026.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 26, 2026, Green Impact Exchange, LLC ("GIX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change 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 is filing with the Commission a proposed rule change to amend Exchange Rules 11.180 and 14.003 to conform with an amendment to the definition of a Round Lot under Rule 600 of Regulation NMS approved by the Commission.³

The text of the proposed rule change is available at the Exchange's website at <https://tradegix.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV. below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240-19b-4.

³ See, Securities Exchange Act Release No. 101070 (September 18, 2024), 89 FR 81620 (October 8, 2024) (S7-302).

³² See Nasdaq Rule 5711(d)(ii).

³³ See Nasdaq Rule 5711(d)(i).

³⁴ *Id.*

³⁵ 15 U.S.C. 78s(g)(1).

³⁶ See Amendment No. 1 at 27102; Nasdaq Rule 5711(d)(i).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ See *supra* note 5.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rules 11.180 and 14.003 to conform with an amendment to the definition of a Round Lot under Rule 600 of Regulation NMS approved by the Commission.⁴ The Exchange also proposes to make a conforming and non-substantive change to Exchange Rule 11.151(a)(1) (Two-Sided Quote Obligation) and correct a minor typographical error in the introductory paragraph of Rule 14.003.

In 2020, the Commission adopted amendments to Regulation NMS to modernize the NMS information provided within the national market system for the benefit of market participants and to better achieve the goals of Section 11A of the Act of assuring “the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities that is prompt, accurate, reliable, and fair” (“MDI Rules”).⁵ These changes included an amendment to Rule 600 of Regulation NMS to include a definition of “round lot” that assigns each NMS stock to a round lot size based on the stock’s average closing price. Prior to this change, a “round lot” was not defined in the Act or Regulation NMS. The definition of a “round lot” was included in the rules of each exchange, including Exchange Rules 11.180 and 14.002, which typically defined a “Round Lot” as 100 shares, but also allowed the exchange, or the primary listing exchange for the stock, discretion to define it otherwise.

In light of delays in the implementation of the MDI Rules, including the definition of round lot, on September 18, 2024, the Commission, among other things, accelerated the implementation of the round lot definition. The Commission also revised the round lot definition as set forth below.⁶ Rule 600(b)(93) of Regulation NMS, as adopted by the MDI Rules and as amended in 2024,⁷ defines a round lot for NMS stocks⁸ that have an average closing price on the primary listing exchange during the prior

Evaluation Period⁹ of: (1) \$250.00 or less per share as 100 shares; (2) \$250.01 to \$1,000.00 per share as 40 shares; (3) \$1,000.01 to \$10,000.00 per share as 10 shares; and (4) \$10,000.01 or more per share as 1 share. For any security that becomes an NMS Stock during an operative period, as described in Rule 600(b)(93)(iv),¹⁰ a round lot is 100 shares. Adjustments to the round lot size for a security will occur on a semiannual basis and the calculation of the average closing price on the primary listing exchange will be based on a one month “Evaluation Period.” The revised definition of a Round Lot was implemented on November 3, 2025, the first business day of November 2025.¹¹

The Exchange now proposes to amend Exchange Rules 11.180 and 14.003 to conform with the definition of Round Lot under Rule 600 of the Regulation NMS. Exchange Rule 11.180(q)(1) provides that “[o]ne hundred (100) shares or any multiple thereof shall constitute a Round Lot, unless an alternative number of shares is established as a Round Lot by the listing exchange for the security.” The Exchange proposes to replace this definition with a sentence that explicitly refers to the definition of round lots under Rule 600 of Regulation NMS. As a result, the above sentence will be deleted and replaced with the following: “For any NMS stock, the “Round Lot” shall be the size assigned by the primary listing market pursuant to Rule 600 of Regulation NMS under the Exchange Act.”

Similarly, Exchange Rule 14.003(a)(30) provides that the term “Round Lot” or “Normal Unit of Trading” means 100 shares of a security[.]” and provides that the Exchange may determine when a “Round Lot” would not mean 100 shares. The Exchange now proposes to also amend Exchange Rule 14.003(a)(30) to explicitly refer to the definition of a

round lot under Rule 600 of Regulation NMS. Again, the Exchange proposes these changes solely to conform to the Exchange’s definition of Round Lot under Exchange Rule 11.180(q)(1) and Exchange Rule 14.003(a)(30) to the new definition of Round Lot under Rule 600 of Regulation NMS.

The Exchange also proposes to make a conforming non-substantive change to Exchange Rule 11.151(a)(1), Two-Sided Quote Obligation. Exchange Rule 11.151(a)(1) currently provides that “[u]nless otherwise designated, a ‘normal unit of trading’ shall be 100 shares.” The Exchange proposes to replace the aforementioned sentence with a sentence that conforms to the newly adopted definition of Round Lot in the Exchange’s rules. As a result, the above sentence will be removed and replaced with the following: “Unless otherwise designated, a ‘normal unit of trading’ shall be a Round Lot as defined in Exchange Rule 11.180.”

Finally, the Exchange proposes to make a ministerial change to Rule 14.003(a) where the word “Rules” is incorrectly stated in the plural; the correct word “Rule” will be substituted in the text.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(1)¹³ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section (b)(5) of the Act¹⁴ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange proposes to amend Exchange Rules 11.180 and 14.003 to conform with the definition of Round Lot under Rule 600 of the Regulation NMS. These changes are being proposed solely to conform to the Exchange’s

⁴ See, supra, note 3.

⁵ See, Securities Exchange Act Release No. 90610 (December 2, 2020), 86 FR 18596 (April 9, 2021) (the “MDI Adopting Release”).

⁶ See, supra, note 3.

⁷ Id.

⁸ “NMS stock” is defined under Regulation NMS as any NMS security other than an option. 17 CFR 242.600(b)(65).

⁹ Rule 600(b)(93)(iii) of Regulation NMS defines the Evaluation Period as: (A) all trading days in March for the round lot assigned on the first business day in May and (B) all trading days in September for the round lot assigned on the first business day in November during which the average closing price of an NMS stock on the primary listing exchange shall be measured by the primary listing exchange to determine the round lot for each NMS stock.

¹⁰ Pursuant to Rule 600(b)(93)(iv) of Regulation NMS the round lot assigned under the section shall be operative on: (A) the first business day of May for the March Evaluation Period and continue through the last business day of October of the calendar year; and (B) the first business day of November for the September Evaluation Period and continue through the last business day of April of the next calendar year.

¹¹ See, Securities Exchange Act Release No. 104172 (October 31, 2025) (Order Granting Temporary Exemptive Relief).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(1).

¹⁴ 15 U.S.C. 78f(b)(5).

definition of “Round Lot” under Exchange Rules 11.180 and 14.002 to the new definition of Round Lot under Rule 600 of Regulation NMS. The Exchange also proposes to make conforming non-substantive changes to Rules 11.151(a)(1), Two-Sided Quote Obligation. These proposed changes are intended to conform the rule text with the changes to Exchange Rules 11.180 and 14.003.

The proposed rule changes would reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that the Exchange’s rules properly reflect the requirements of Rule 600 of Regulation NMS. The Exchange also believes that the proposed rule changes would remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange’s jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange’s rules. The proposed rule changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change does not impose any burden on intra-market or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes to amend the definition of Round Lot are not intended to address competitive issues but rather are concerned solely with amending the Exchange’s Rules to conform with the amended definition of Round Lot under Rule 600 of the Regulation NMS.

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 Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A) of the Act¹⁵ and Rule 19b–4(f)(6)¹⁶ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b–4(f)(6)¹⁸ thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change simply amends Exchange Rules 11.180 and 14.003 to conform with an amendment to the definition of a Round Lot under Rule 600 of Regulation NMS and to make the Exchange’s rulebook clear and transparent for market participants. As a result, the proposal does not introduce any novel regulatory issues. Accordingly, the Commission designates the proposed rule change to be operative upon filing.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 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b–4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁹ 17 CFR 240.19b–4(f)(6).

²⁰ 17 CFR 240.19b–4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–GIX–2026–01 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–GIX–2026–01. 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 also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–GIX–2026–01 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–11036 Filed 6–2–26; 8:45 am]

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²² 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION**[OMB Control No. 3235-0178]****Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 31a-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 (SEC or “Commission”) is soliciting comments on the proposed collection of information described below.

Rule 31a-1 (17 CFR 270.31a-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires registered investment companies, business development companies (BDCs), and certain of their majority-owned subsidiaries to maintain and keep current the accounts, books, auditors’ certificates, and other documents that underlie and support the financial statements these entities are required to file with the Commission under section 30 of the Act. The Commission regularly conducts inspections and examinations of funds and other regulated entities to foster compliance with the securities laws, to detect violations of the law, and to keep the Commission informed of developments in the regulated community. Without the information contained in the records required by rule 31a-1, the Commission could not readily determine whether funds are in compliance with the Act’s provisions.

The collection of information is found at 17 CFR 270.31a-1. Compliance with the recordkeeping requirements of rule 31a-1 is mandatory for registered investment companies, BDCs, and certain majority-owned subsidiaries, as required by section 31(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(a)).

The books and records required to be maintained by rule 31a-1 constitute a major focus of the Commission’s inspection and examination programs. The Commission uses these records during inspections and examinations to foster compliance with the securities laws, to detect violations of the law, and to keep the Commission informed of developments in the regulated community. The rule’s requirement to maintain such records avoids the need for potentially more burdensome requirements such as mandatory filings

of similar information with the Commission.

The Commission staff estimates that there are approximately 14,301 total entities (14,125 series of investment companies and 176 BDCs) required to comply with rule 31a-1. Each entity spends approximately 1,750 hours per year complying with the rule, for a total estimated annual burden of 25,026,750 hours. However, the Commission estimates that at least 90% of this burden would be incurred in any case as a normal business practice, resulting in an estimated actual annual burden of 2,502,675 hours attributable to the rule. The estimated annual cost per entity is \$613,200, broken down as follows: 175 hours by office clerks at \$144 per hour (\$25,200); 1,312.5 hours by fund accountants and auditors at \$348 per hour (\$456,750); 87.5 hours by lawyers at \$744 per hour (\$65,100); and 175 hours by management analysts at \$378 per hour (\$66,150). The total estimated annual cost to the industry attributable to the rule is approximately \$877 million. There is no external cost burden beyond the internal labor costs described above.

This is a recordkeeping requirement and no reporting or filing with the Commission is required; therefore, confidentiality is not applicable. The records required by rule 31a-1 are required to be preserved pursuant to rule 31a-2 under the Investment Company Act (17 CFR 270.31a-2), which specifies the retention periods for various categories of records.

A copy of the collection of information and related instructions may be obtained at no charge at the Securities and Exchange Commission’s website at www.sec.gov. The Commission is soliciting comments to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Persons wishing to submit comments on the collection of information requirements should direct them to PaperworkReduction@sec.gov. Comments must be submitted within 60 days of this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC’s estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic collection techniques or other forms of information technology.

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 Rutenberg via email to PaperworkReductionAct@sec.gov by August 3, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: June 1, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11130 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105581; File No. SR-CboeBYX-2026-022]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 11.26(a)

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 2026, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 Exchange. The Exchange filed the proposal as a “non-controversial”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 BYX Exchange, Inc. ("BYX" or the "Exchange") proposes to update Rule 11.26(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the planned operation of the Texas Stock Exchange LLC ("TXSE") as a registered national securities exchange⁵ beginning between July 2, 2026, and July 17, 2026.⁶ The text of the proposed rule change is provided in Exhibit 5.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update Rule 11.26(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i)

order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of the TXSE as a registered national securities exchange.

On September 30, 2025, the Commission approved TXSE's application to register as a national securities exchange.⁷ As part of its transition to exchange status, TXSE announced that it plans to commence trading on its exchange between July 2, 2026 and July 17, 2026.⁸ The Exchange, therefore, proposes to update Rule 11.26(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of TXSE as a registered national securities exchange beginning between July 2, 2026 and July 17, 2026. Specifically, the Exchange proposes to amend Rule 11.26(a) to include TXSE by stating it will utilize TXSE market data from the Consolidated Quotation System ("CQS")/UTP Quotation Data Feed ("UQDF") for purposes of order handling, routing, execution, and related compliance processes.

Additionally, on January 29, 2026, Nasdaq BX filed with the Commission a proposal to convert from a corporation organized under the laws of the state of Delaware to one organized under the laws of the state of Texas and changed its name from Nasdaq BX, LLC to Nasdaq Texas, LLC.⁹ The Exchange accordingly proposes a conforming change to its rules to replace the name of Nasdaq BX with Nasdaq Texas. Specifically, the Exchange proposes to replace one reference to "BX" in Rule 11.26(a) with "Texas."

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)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update Exchange Rule 11.26(a) to include TXSE and reference Nasdaq Texas will ensure that the Rule publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

In addition, the proposed amendments would reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand, and comply with the Exchange's rules. The Exchange also believes that the proposed amendments remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 104146 (September 30, 2025), 90 FR 47880 (October 2, 2025).

⁶ See Member Readiness and Launch Guide, dated December, 2025 (<https://www.txse.com/trading-membership/member-readiness-and-launch-guide>) (stating that TXSE anticipates that trading will commence between July 2, 2026–July 17, 2026).

⁷ *Supra* note 4.

⁸ *Supra* note 5.

⁹ See Securities Exchange Act Release No. 104736 (January 29, 2026), 91 FR 4980 (February 3, 2026) (SR-BX-2026-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Repeal the Restated Certificate of Incorporation and Adopt a Certificate of Formation and Company Agreement).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule changes may become operative upon filing. In the filing, the Exchange stated it is proposing these changes to reflect the launch of TXSE as a national securities exchange and reflect the name change of Nasdaq BX to Nasdaq Texas that will allow the Exchange to identify on a market-by-market basis all the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The Commission has published a similar prior proposed rule change by the Exchange to disclose via its rules the data feeds it currently utilizes for order handling, routing, execution, and related compliance processes.¹⁶ The

proposed rule changes do not raise any novel issues, and waiver of the operative delay allows for the immediate clarification of the Exchange's rules to reflect these changes. Therefore, waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁷

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-CboeBYX-2026-022 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-CboeBYX-2026-022. 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-CboeBYX-2026-022 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-11033 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105577; File No. SR-NYSETEX-2026-18]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc.

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 throughout,² notice is hereby given that on May 20, 2026, NYSE Texas, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("ICE") to reflect regulations relating to security-based swap execution facilities ("SBSEFs") and make non-substantive and conforming changes. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6)

¹⁵ 17 CFR 240.19b-4(f)(6)(iii)

¹⁶ See Securities Exchange Act Release No. 104077 (September 25, 2025), 90 FR 46944 (September 30, 2025) (SR-CboeEDGX-2025-074).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the ICE Current Certificate to reflect regulations relating to SBSEFs and make non-substantive and conforming changes.³ No change is proposed to the Certificate of Formation of the Exchange.

The changes to the ICE Current Certificate described herein would become operative upon the proposed Eighth Amended and Restated Certificate of Incorporation ("Proposed Certificate") becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Changes Related to SBSEFs

Securities and Exchange Commission ("Commission") regulations extend limitations on stockholder voting and ownership to SBSEFs.⁴ Because ICE's subsidiary ICE Swap Trade, LLC ("IST") has registered with the Commission as an SBSEF, these Commission regulations apply.

IST has adopted Rule 410 (Ownership Limitation),⁵ which IST has advised the Exchange was designed to incorporate the requirements of 17 CFR 242.834 ("Rule 834") into the rules of the SBSEF. Additionally, ICE intends to

amend the Current Certificates as described below.

The Current Certificate would be amended as follows.

First, Article V (Limitations on Voting and Ownership) has limitations on stockholder voting and ownership that apply so long as ICE directly or indirectly controls a national securities exchange registered under the Act, such as the Exchange, and an SBSEF registered under the Act. The following changes would be made to Article V:

- The first sentence of Article V(A)(1) (Voting Limitation), would be amended to delete "or a security-based swap execution facility registered under Section 3D of the Exchange Act" immediately prior to (a).

- The end of Article V(A)(2) would be modified by deleting "(and, with respect to a security-based swap execution facility registered under Section 3D of the Exchange Act, such resolution shall have been submitted to the SEC under Rule 242.806 or 242.807 under Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)" from (c).

- Article V(A)(3)(a) would be modified by deleting text from the start of (i) as follows (proposed deletions in brackets):

(i) will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act [or any security-based swap execution facility registered under Section 3D of the Exchange Act, in any case] that is directly or indirectly controlled by the Corporation (each such national securities exchange [or security-based swap execution facility] so controlled, an "Exchange"),

- A new Article V(A)(4) would be added as follows (all text is new):

In addition to the limitations in subsections 1–3 above of this Section A of Article V, for so long as the Corporation shall directly or indirectly control a security-based swap execution facility registered under Section 3D of the Exchange Act (each security-based swap execution facility so controlled, an "SBSEF"), no SBSEF Member (as defined below), either alone or together with its Related Persons, shall be entitled directly or indirectly to vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20% of the voting power of any class of securities or of other ownership interest in the Corporation (such threshold being hereinafter referred to as the "SBSEF Voting Limitation"), and the Corporation shall disregard any such

votes purported to be cast in excess of the SBSEF Voting Limitation.

- The text after "enforced against such Record Owner" in current Article V(A)(5) (Article V(A)(6) of the Proposed Certificate) would be amended as follows (proposed deletion in brackets, proposed additions in *italics*):

in a manner that will accomplish the Voting Limitation[and], the Recalculated Voting Limitation *and the SBSEF Voting Limitation* applicable to such Person and its Related Persons.

- The definition of "Member" in current Article V(A)(8) (Article V(A)(9) of the Proposed Certificate) would be modified as follows (proposed deletions in bracket):

"Member" shall mean, with respect to any national securities exchange, a Person that is a "member" of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act[or, with respect to a security-based swap execution facility, a Person that is a "member" within the meaning of Rule 242.802 of Regulation SE under the Exchange Act].

- The definition of "Related Persons" in current Article V(A)(10) (Article V(A)(11) of the Proposed Certificate) would be modified as follows (proposed additions in *italics*):

(d) in the case of a Person that is a Member *or SBSEF Member*, any Person that is associated with such Person (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

(e) in the case of a Person that is a natural person and is a Member *or SBSEF Member*, any broker or dealer that is also a Member *or SBSEF Member* with which such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

- The definition of "SBSEF Member" would be added as new Article V(A)(12), as follows (all text new):

12. "*SBSEF Member*" means, with respect to a security-based swap execution facility, a Person that is a "member" within the meaning of Rule 242.802 of Regulation SE under the Exchange Act.

- The end of the concentration limits in Article V(B)(2) (Ownership Concentration Limitation) would be modified by deleting the following

³ ICE is the sole shareholder of ICE Holdings. ICE Holdings is the parent company of ICE Swap Trade, LLC. ICE Holdings is also the sole shareholder of NYSE Holdings LLC, which is the sole shareholder of NYSE Group, Inc., which is the sole shareholder of NYSE Texas Holdings, Inc. the parent company of the Exchange.

⁴ See 17 CFR 242.834. See also Securities Exchange Act Release No. 98845 (November 2, 2023), 88 FR 87156 (December 15, 2023) (Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities) (adopting new Regulation SE, consisting of 17 CFR 242.800 through 17 CFR 242.835), effective February 13, 2024).

⁵ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

parenthetical from (c): “(and, with respect to an Exchange that is a security-based swap execution facility, such resolution shall have been submitted to the SEC pursuant to Rule 242.806 or 242.807 of Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)”.

- A new paragraph would be added to Article V(B) as follows (all text new):

5. In addition to the limitations in subsections 1–4 above of this Section B of Article V, for so long as the Corporation shall directly or indirectly control any SBSEF, no SBSEF Member, either alone or together with its Related Persons, shall be permitted at any time to own, directly or indirectly, 20% or more of any class of voting securities or of other voting interest in the Corporation (the “*SBSEF Concentration Limitation*”). If any SBSEF Member, either alone or together with its Related Persons, at any time beneficially owns voting securities or other voting interest in the Corporation in excess of the SBSEF Concentration Limitation, such SBSEF Member and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, at a price equal to the par value of such voting securities or other voting interest and to the extent funds are legally available therefor, that number of voting securities or other voting interest of the Corporation necessary so that such SBSEF Member, together with its Related Persons, shall beneficially own, directly or indirectly, less than 20% of any class of voting securities or of other voting interest in the Corporation, after taking into account that such repurchased voting securities or other voting interest shall become treasury shares and shall no longer be deemed to be outstanding.

- The second clause of current Article V(B)(5) (Article V(B)(6) of the Proposed Certificate) would be amended as follows (proposed additions in *italics*): provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation or *SBSEF Concentration Limitation*, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section B.4 or B.5, as applicable, of this ARTICLE V.

- The first sentence of current Article V(B)(6) (Article V(A)(7) of the Proposed

Certificate) would be amended as follows (proposed in *italics*):

If any share of Common Stock shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such share of Common Stock is subject to the Concentration Limitations and *SBSEF Concentration Limitation* as set in Section B of this Article V.

- The final clause of Article V(C)(2) (Procedure for Repurchasing Stock) would be amended to add “or SBSEF Concentration Limitation” after “Concentration Limitation”.

- Subclauses (i) and (ii) of the first sentence of Article V(D) (Right to Information; Determinations by the Board of Directors) would be amended as follows (proposed deletion in brackets, proposed additions in *italics*):

(i) to be subject to the Voting Limitation, [or] the Recalculated Voting Limitation or the *SBSEF Voting Limitation*, (ii) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation or *SBSEF Concentration Limitation*,

Second, the parenthetical in the first sentence of Article IX(B) (Quorum) would be amended as follows (proposed deletions in brackets, proposed additions in *italics*):

(it being understood that any shares in excess of the Voting Limitation, [or] the Recalculated Voting Limitation or the *SBSEF Voting Limitation* shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section A or Section B of ARTICLE V).

Article X (Amendments) of the Current Certificate requires any amendment to, or repeal of any provision in, the Current Certificate to be filed with, or filed with and approved by, the Commission. The final sentence would be amended to delete “(or, in the case of a security-based swap execution facility, Rule 242.806 or 242.807 under Regulation SE under the Exchange Act)” immediately following “the rules promulgated thereunder”.

Other Changes

The Exchange proposes to make changes that are conforming or technical in nature. All are non-substantive.

References to the “Seventh Amended and Restated Certificate of

Incorporation” and the “Sixth Amended and Restated Certificate of Incorporation” in the titles, introductory paragraphs, and signature lines would be changed to refer to the “Eighth Amended and Restated Certificate of Incorporation” and “Seventh Amended and Restated Certificate of Incorporation,” respectively.

The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

Paragraphs after proposed Article V(A)(4) and proposed Article V(B)(5) would be renumbered.

In Article X (Amendments), the parenthetical “(or the boards of directors of their successors)” would be deleted as unnecessary, because “Exchange” includes all ICE Holdings-controlled national securities exchanges.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(1)⁸ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Together, the Proposed Certificate and IST Rule 410⁹ is consistent with the Act and the rules promulgated under the Act.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members because none of the proposed changes to the Proposed Certificate substantively would impact the Exchange. Rather the proposed changes are solely concerned with SBSEFs and making conforming changes.

Additionally, IST has advised the Exchange that IST Rule 410 would,

⁶ See the definition of “Exchange” in ICE Holdings Current Certificate of Incorporation, Article V(A)(1). No change to the definition is proposed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

independently of these changes to the Proposed Certificates, provide the means to ensure that IST is in compliance with Rule 834(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issue but rather is concerned solely with ensuring that IST is in compliance with Regulation SE and making non-substantive and conforming changes to the Current Certificate. No change is proposed to the Certificate of Formation of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSETEX-2026-18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSETEX-2026-18. 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-NYSETEX-2026-18 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-11030 Filed 6-2-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105576; File No. SR-NYSE-2026-25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc.

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 20, 2026, New York Stock Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("ICE") to reflect regulations relating to security-based swap execution facilities ("SBSEFs") and make non-substantive and conforming changes. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 200.30-3(a)(12).

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 ICE Current Certificate to reflect regulations relating to SBSEFs and make non-substantive and conforming changes.³ No change is proposed to the operating agreement of the Exchange.

The changes to the ICE Current Certificate described herein would become operative upon the proposed Eighth Amended and Restated Certificate of Incorporation ("Proposed Certificate") becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Changes Related to SBSEFs

Securities and Exchange Commission ("Commission") regulations extend limitations on stockholder voting and ownership to SBSEFs.⁴ Because ICE's subsidiary ICE Swap Trade, LLC ("IST") has registered with the Commission as an SBSEF, these Commission regulations apply.

IST has adopted Rule 410 (Ownership Limitation),⁵ which IST has advised the Exchange was designed to incorporate the requirements of 17 CFR 242.834 ("Rule 834") into the rules of the SBSEF. Additionally, ICE intends to amend the Current Certificates as described below.

The Current Certificate would be amended as follows.

First, Article V (Limitations on Voting and Ownership) has limitations on stockholder voting and ownership that apply so long as ICE directly or indirectly controls a national securities exchange registered under the Act, such as the Exchange, and an SBSEF registered under the Act. The following changes would be made to Article V:

- The first sentence of Article V(A)(1) (Voting Limitation), would be amended to delete "or a security-based swap execution facility registered under Section 3D of the Exchange Act" immediately prior to (a).

- The end of Article V(A)(2) would be modified by deleting "(and, with respect to a security-based swap execution facility registered under Section 3D of the Exchange Act, such resolution shall have been submitted to the SEC under Rule 242.806 or 242.807 under Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)" from (c).

- Article V(A)(3)(a) would be modified by deleting text from the start of (i) as follows (proposed deletions in brackets):

- (i) will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act [or any security-based swap execution facility registered under Section 3D of the Exchange Act, in any case] that is directly or indirectly controlled by the Corporation (each such national securities exchange [or security-based swap execution facility] so controlled, an "Exchange"),

- A new Article V(A)(4) would be added as follows (all text is new):

In addition to the limitations in subsections 1–3 above of this Section A of Article V, for so long as the Corporation shall directly or indirectly control a security-based swap execution facility registered under Section 3D of the Exchange Act (each security-based swap execution facility so controlled, an "SBSEF"), no SBSEF Member (as defined below), either alone or together with its Related Persons, shall be entitled directly or indirectly to vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20% of the voting power of any class of securities or of other ownership interest in the Corporation (such threshold being hereinafter referred to as the "SBSEF Voting Limitation"), and the Corporation shall disregard any such votes purported to be cast in excess of the SBSEF Voting Limitation.

- The text after "enforced against such Record Owner" in current Article V(A)(5) (Article V(A)(6) of the Proposed Certificate) would be amended as follows (proposed deletion in brackets, proposed additions in *italics*):

in a manner that will accomplish the Voting Limitation[and], the Recalculated Voting Limitation *and the SBSEF Voting Limitation* applicable to such Person and its Related Persons.

- The definition of "Member" in current Article V(A)(8) (Article V(A)(9) of the Proposed Certificate) would be modified as follows (proposed deletions in bracket):

"Member" shall mean, with respect to any national securities exchange, a

Person that is a "member" of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act[or, with respect to a security-based swap execution facility, a Person that is a "member" within the meaning of Rule 242.802 of Regulation SE under the Exchange Act].

- The definition of "Related Persons" in current Article V(A)(10) (Article V(A)(11) of the Proposed Certificate) would be modified as follows (proposed additions in *italics*):

- (d) in the case of a Person that is a Member *or SBSEF Member*, any Person that is associated with such Person (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

- (e) in the case of a Person that is a natural person and is a Member *or SBSEF Member*, any broker or dealer that is also a Member *or SBSEF Member* with which such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

- The definition of "SBSEF Member" would be added as new Article V(A)(12), as follows (all text new):

12. "*SBSEF Member*" means, with respect to a security-based swap execution facility, a Person that is a "member" within the meaning of Rule 242.802 of Regulation SE under the Exchange Act.

- The end of the concentration limits in Article V(B)(2) (Ownership Concentration Limitation) would be modified by deleting the following parenthetical from (c): "(and, with respect to an Exchange that is a security-based swap execution facility, such resolution shall have been submitted to the SEC pursuant to Rule 242.806 or 242.807 of Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)".

- A new paragraph would be added to Article V(B) as follows (all text new):

5. In addition to the limitations in subsections 1–4 above of this Section B of Article V, for so long as the Corporation shall directly or indirectly control any SBSEF, no SBSEF Member, either alone or together with its Related Persons, shall be permitted at any time to own, directly or indirectly, 20% or more of any class of voting securities or of other voting interest in the

³ ICE is the sole shareholder of ICE Holdings. ICE Holdings is the parent company of ICE Swap Trade, LLC. ICE Holdings is also the sole shareholder of NYSE Holdings LLC, which is the sole shareholder of NYSE Group, Inc., the parent company of the Exchange.

⁴ See 17 CFR 242.834. See also Securities Exchange Act Release No. 98845 (November 2, 2023), 88 FR 87156 (December 15, 2023) (Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities) (adopting new Regulation SE, consisting of 17 CFR 242.800 through 17 CFR 242.835), effective February 13, 2024).

⁵ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

Corporation (the “*SBSEF Concentration Limitation*”). If any SBSEF Member, either alone or together with its Related Persons, at any time beneficially owns voting securities or other voting interest in the Corporation in excess of the SBSEF Concentration Limitation, such SBSEF Member and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, at a price equal to the par value of such voting securities or other voting interest and to the extent funds are legally available therefor, that number of voting securities or other voting interest of the Corporation necessary so that such SBSEF Member, together with its Related Persons, shall beneficially own, directly or indirectly, less than 20% of any class of voting securities or of other voting interest in the Corporation, after taking into account that such repurchased voting securities or other voting interest shall become treasury shares and shall no longer be deemed to be outstanding.

- The second clause of current Article V(B)(5) (Article V(B)(6) of the Proposed Certificate) would be amended as follows (proposed additions in *italics*): provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation or *SBSEF Concentration Limitation*, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section B.4 or B.5, as applicable, of this ARTICLE V.

- The first sentence of current Article V(B)(6) (Article V(A)(7) of the Proposed Certificate) would be amended as follows (proposed addition in *italics*):

If any share of Common Stock shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such share of Common Stock is subject to the Concentration Limitations and *SBSEF Concentration Limitation* as set in Section B of this Article V.

- The final clause of Article V(C)(2) (Procedure for Repurchasing Stock) would be amended to add “or SBSEF Concentration Limitation” after “Concentration Limitation”.

- Subclauses (i) and (ii) of the first sentence of Article V(D) (Right to Information; Determinations by the Board of Directors) would be amended as follows (proposed deletion in brackets, proposed additions italic):

(i) to be subject to the Voting Limitation, [or] the Recalculated Voting Limitation or the *SBSEF Voting Limitation*, (ii) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation or *SBSEF Concentration Limitation*,

Second, the parenthetical in the first sentence of Article IX(B) (Quorum) would be amended as follows (proposed deletions in brackets, proposed additions in *italics*):

(it being understood that any shares in excess of the Voting Limitation, [or] the Recalculated Voting Limitation or the *SBSEF Voting Limitation* shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section A or Section B of ARTICLE V).

Article X (Amendments) of the Current Certificate requires any amendment to, or repeal of any provision in, the Current Certificate to be filed with, or filed with and approved by, the Commission. The final sentence would be amended to delete “(or, in the case of a security-based swap execution facility, Rule 242.806 or 242.807 under Regulation SE under the Exchange Act)” immediately following “the rules promulgated thereunder”.

Other Changes

The Exchange proposes to make changes that are conforming or technical in nature. All are non-substantive.

References to the “Seventh Amended and Restated Certificate of Incorporation” and the “Sixth Amended and Restated Certificate of Incorporation” in the titles, introductory paragraphs, and signature lines would be changed to refer to the “Eighth Amended and Restated Certificate of Incorporation” and “Seventh Amended and Restated Certificate of Incorporation,” respectively.

The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

Paragraphs after proposed Article V(A)(4) and proposed Article V(B)(5) would be renumbered.

In Article X (Amendments), the parenthetical “(or the boards of directors of their successors)” would be deleted as unnecessary, because “Exchange” includes all ICE Holdings-

controlled national securities exchanges.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(1)⁸ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Together, the Proposed Certificate and IST Rule 410⁹ is consistent with the Act and the rules promulgated under the Act.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members because none of the proposed changes to the Proposed Certificate substantively would impact the Exchange. Rather the proposed changes are solely concerned with SBSEFs and making conforming changes.

Additionally, IST has advised the Exchange that IST Rule 410 would, independently of these changes to the Proposed Certificates, provide the means to ensure that IST is in compliance with Rule 834(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issue but rather is concerned solely with ensuring that IST is in compliance with Regulation SE and making non-substantive and conforming changes to the Current Certificate. No change is proposed to the operating agreement of the Exchange.

⁶ See the definition of “Exchange” in ICE Holdings Current Certificate of Incorporation, Article V(A)(1). No change to the definition is proposed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2026-25 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-2026-25. 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-2026-25 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11029 Filed 6-2-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105573; File No. SR-CboeEDGA-2026-018]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 13.4(a)

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 2026, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and

Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. ("EDGA" or the "Exchange") proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the planned operation of the Texas Stock Exchange LLC ("TXSE") as a registered national securities exchange⁵ beginning between July 2, 2026, and July 17, 2026.⁶ The text of the proposed rule change is provided in Exhibit 5.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 104146 (September 30, 2025), 90 FR 47880 (October 2, 2025).

⁶ See Member Readiness and Launch Guide, dated December, 2025 (<https://www.txse.com/trading-membership/member-readiness-and-launch-guide>) (stating that TXSE anticipates that trading will commence between July 2, 2026–July 17, 2026).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

operation of the TXSE as a registered national securities exchange.

On September 30, 2025, the Commission approved TXSE's application to register as a national securities exchange.⁷ As part of its transition to exchange status, TXSE announced that it plans to commence trading on its exchange between July 2, 2026 and July 17, 2026.⁸ The Exchange, therefore, proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of TXSE as a registered national securities exchange beginning between July 2, 2026 and July 17, 2026. Specifically, the Exchange proposes to amend Rule 13.4(a) to include TXSE by stating it will utilize TXSE market data from the Consolidated Quotation System ("CQS")/UTP Quotation Data Feed ("UQDF") for purposes of order handling, routing, execution, and related compliance processes.

Additionally, on January 29, 2026, Nasdaq BX filed with the Commission a proposal to convert from a corporation organized under the laws of the state of Delaware to one organized under the laws of the state of Texas and changed its name from Nasdaq BX, LLC to Nasdaq Texas, LLC.⁹ The Exchange accordingly proposes a conforming change to its rules to replace the name of Nasdaq BX with Nasdaq Texas. Specifically, the Exchange proposes to replace one reference to "BX" in Rule 13.4(a) with "Texas."

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)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update Exchange Rule 13.4(a) to include TXSE and reference Nasdaq Texas will ensure that the Rule publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

In addition, the proposed amendments would reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand, and comply with the Exchange's rules. The Exchange also believes that the proposed amendments remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on

this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule changes may become operative upon filing. In the filing, the Exchange stated it is proposing these changes to reflect the launch of TXSE as a national securities exchange and reflect the name change of Nasdaq BX to Nasdaq Texas that will allow the Exchange to identify on a market-by-market basis all the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The Commission has published a similar prior proposed rule change by the Exchange to disclose via its rules the data feeds it currently utilizes for order handling, routing, execution, and related compliance processes.¹⁶ The proposed rule changes do not raise any novel issues, and waiver of the operative delay allows for the immediate clarification of the Exchange's rules to reflect these changes. Therefore, waiver of the 30-day

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities Exchange Act Commission Release No. 104077 (September 25, 2025), 90 FR 46944 (September 30, 2025) (SR-ChoeEDGX-2025-074).

⁷ *Supra* note 4.

⁸ *Supra* note 5.

⁹ See Securities Exchange Act Release No. 104736 (January 29, 2026), 91 FR 4980 (February 3, 2026) (SR-BX-2026-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Repeal the Restated Certificate of Incorporation and Adopt a Certificate of Formation and Company Agreement).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2026-018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGA-2026-018. 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-CboeEDGA-2026-018 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11026 Filed 6-2-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105583; File No. SR-IEX-2026-16]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rules 2.220(a)(7) and 11.410(a) To Add Texas Stock Exchange

May 29, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on May 21, 2026, the Investors Exchange LLC ("IEX" 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

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule to amend IEX Rules 2.220(a)(7), 11.410(a), and 11.410(a)(2) to include Texas Stock Exchange ("TXSE") in the list of away trading centers to which the Exchange routes and the market data sources the Exchange will use for necessary price reference points in anticipation of TXSE's planned launch. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Exchange proposes to amend IEX Rules 2.220(a)(7)⁸ and 11.410(a)⁹ to include TXSE in the list of away trading centers to which the Exchange routes and the market data sources the Exchange will use to determine Top of Book¹⁰ quotations, the NBBO¹¹ and certain regulatory, reporting and compliance systems within IEX in anticipation of TXSE's planned exchange launch in July 2026.¹² The Exchange proposes to amend the IEX Rule 2.220(a)(7) to add TXSE to the list of away trading centers to which IEX Services routes orders. As set forth in IEX Rule 11.230(b)(2), IEX Services routes eligible orders to away trading centers with accessible Protected Quotations in compliance with Regulation NMS Rule 611.¹³ IEX Rule 2.220(a)(7) lists the away trading centers that IEX Services routes to as outbound router for the Exchange. The Exchange must include TXSE in its list of away trading centers to which it routes because TXSE's best-priced, displayed quotation will be a Protected Quotation under Regulation NMS Rule

⁸ IEX Rule 2.220(a)(7) lists the away trading centers that IEX Services LLC ("IEX Services") routes to as outbound router for the Exchange.

⁹ IEX Rule 11.410(a) specifies the market data sources for each away trading center that the Exchange uses for necessary price reference points.

¹⁰ See IEX Rule 11.410(a)(1).

¹¹ See IEX Rule 1.160(u).

¹² TXSE anticipates commencing trading on July 6, 2026. See TXSE Production Launch and Market Activation, dated May 6, 2026, available at <https://www.txse.com/alerts/txse-2026-002>.

¹³ 17 CFR 242.611.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12), (59).

¹⁵ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.199b-4.

600(b)(62)¹⁴ for purposes of Regulation NMS Rule 611.¹⁵

The Exchange also proposes to amend and update the table in IEX Rule 11.410(a) specifying the primary source for TXSE market data. IEX Rule 11.410(a) lists the specific data feeds the Exchange uses to determine Top of Book quotations for away exchanges, the NBBO and for certain reporting, regulatory and compliance systems within IEX. The Exchange proposes to amend the table in IEX Rule 11.410(a) to specify that the Exchange will use securities information processor ("SIP") data, *i.e.*, CQS SIP data for securities reported under the Consolidated Quotation Services and Consolidated Tape Association plans and UQDF SIP data for securities reported under the Nasdaq Unlisted Trading Privileges plan, as the primary source of market data used to determine TXSE's Top of Book quotes. The Exchange also proposes to make a conforming change to the rule text of Rule 11.410(a)(2) so that the provision is consistent with the table in Rule 11.410(a). The proposed changes do not alter the manner in which orders are handled or routed by the Exchange.

The Exchange proposes to make these changes operative on the date that TXSE launches operations.

2. Statutory Basis

IEX believes that the proposed rule changes are consistent with the provisions of Section 6(b)¹⁶ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

For the reasons discussed in the Purpose section, the Exchange believes that the proposed rule changes remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because amending the list of away trading centers to which IEX routes by adding TXSE and adding TXSE to the table in Rule 11.410(a) and rule text of Rule 11.410(a)(2) designating

the SIP data as the primary source of market data the Exchange will use to determine away trading center Top of Book quotes, the NBBO, and for certain regulatory, reporting and compliance systems within IEX, will facilitate the Exchange's compliance with the applicable requirements of Regulation NMS.

Additionally, amending the list of away trading centers to which IEX routes by adding TXSE and adding TXSE to the table designating the SIP data as the primary source of market data the Exchange will use to determine away trading center Top of Book quotes, the NBBO, and for certain regulatory, reporting and compliance systems within IEX, provides transparency with respect to the away trading centers to which IEX Services may route orders and the source of market data the Exchange will use to determine TXSE's Top of Book quotes.

Further, the Exchange believes it is consistent with the Act to add TXSE to the source of market data the Exchange will use to determine Top of Book quotes so that IEX's rules accurately specify away markets referenced, as well as to avoid any potential confusion on the part of market participants. The Exchange also believes it is consistent with the Act to make a conforming change to Rule 11.410(a)(2) so that provision is consistent with the table in Rule 11.410(a).

As noted in the Purpose section, the proposed changes are non-substantive and do not alter the manner in which orders are handled or routed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed updates do not impact competition in any respect since the purpose is to enhance transparency with respect to the operation of the Exchange and its use of market data feeds.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6)¹⁹ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6)²¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change simply adds TXSE to the list of away trading centers to which IEX routes orders and clarifies that SIP data will be the primary source of data that the Exchange will utilize for determining TXSE's Top of Book quotes. As a result, the proposal does not introduce any novel regulatory issues. Waiving the 30-day operative delay also will ensure that the IEX rules will be updated to reflect the addition of TXSE prior to the commencement of trading on TXSE. Accordingly, the Commission designates the proposed rule change to be operative upon filing.²⁴

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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 17 CFR 242.600(b)(62).

¹⁵ See Securities Exchange Act Release No. 104146 (September 30, 2025), 90 FR 47880 (October 2, 2025) (Order approving Texas Stock Exchange LLC application for registration as a national securities exchange).

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

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-LEX-2026-16 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-LEX-2026-16. 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-LEX-2026-16 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-11035 Filed 6-2-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105575; File No. SR-NYSEARCA-2026-56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc.

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 20, 2026, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("ICE") to reflect regulations relating to security-based swap execution facilities ("SBSEFs") and make non-substantive and conforming changes. 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 ICE Current Certificate to reflect regulations relating to SBSEFs and make non-substantive and conforming changes.³ No change is proposed to the certificate of incorporation of the Exchange.

The changes to the ICE Current Certificate described herein would become operative upon the proposed Eighth Amended and Restated Certificate of Incorporation ("Proposed Certificate") becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Changes Related to SBSEFs

Securities and Exchange Commission ("Commission") regulations extend limitations on stockholder voting and ownership to SBSEFs.⁴ Because ICE's subsidiary ICE Swap Trade, LLC ("IST") has registered with the Commission as an SBSEF, these Commission regulations apply.

IST has adopted Rule 410 (Ownership Limitation),⁵ which IST has advised the Exchange was designed to incorporate the requirements of 17 CFR 242.834 ("Rule 834") into the rules of the SBSEF. Additionally, ICE intends to amend the Current Certificates as described below.

The Current Certificate would be amended as follows.

First, Article V (Limitations on Voting and Ownership) has limitations on stockholder voting and ownership that apply so long as ICE directly or indirectly controls a national securities exchange registered under the Act, such as the Exchange, and an SBSEF registered under the Act. The following changes would be made to Article V:

- The first sentence of Article V(A)(1) (Voting Limitation), would be amended to delete "or a security-based swap execution facility registered under

³ ICE is the sole shareholder of ICE Holdings. ICE Holdings is the parent company of ICE Swap Trade, LLC. ICE Holdings is also the sole shareholder of NYSE Holdings LLC, which is the sole shareholder of NYSE Group, Inc., the parent company of the Exchange.

⁴ See 17 CFR 242.834. See also Securities Exchange Act Release No. 98845 (November 2, 2023), 88 FR 87156 (December 15, 2023) (Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities) (adopting new Regulation SE, consisting of 17 CFR 242.800 through 17 CFR 242.835), effective February 13, 2024).

⁵ See ICE Swap Trade, LLC Submission No. 25-02 (SBSF-ICES-2025-002).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁵ 17 CFR 200.30-3(a)(12).

Section 3D of the Exchange Act” immediately prior to (a).

- The end of Article V(A)(2) would be modified by deleting “(and, with respect to a security-based swap execution facility registered under Section 3D of the Exchange Act, such resolution shall have been submitted to the SEC under Rule 242.806 or 242.807 under Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)” from (c).

- Article V(A)(3)(a) would be modified by deleting text from the start of (i) as follows (proposed deletions in brackets):

(i) will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act [or any security-based swap execution facility registered under Section 3D of the Exchange Act, in any case] that is directly or indirectly controlled by the Corporation (each such national securities exchange [or security-based swap execution facility] so controlled, an “Exchange”),

- A new Article V(A)(4) would be added as follows (all text is new):

In addition to the limitations in subsections 1–3 above of this Section A of Article V, for so long as the Corporation shall directly or indirectly control a security-based swap execution facility registered under Section 3D of the Exchange Act (each security-based swap execution facility so controlled, an “SBSEF”), no SBSEF Member (as defined below), either alone or together with its Related Persons, shall be entitled directly or indirectly to vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20% of the voting power of any class of securities or of other ownership interest in the Corporation (such threshold being hereinafter referred to as the “SBSEF Voting Limitation”), and the Corporation shall disregard any such votes purported to be cast in excess of the SBSEF Voting Limitation.

- The text after “enforced against such Record Owner” in current Article V(A)(5) (Article V(A)(6) of the Proposed Certificate) would be amended as follows (proposed deletion in brackets, proposed additions in **bold**): in a manner that will accomplish the Voting Limitation [and], the Recalculated Voting Limitation **and the SBSEF Voting Limitation** applicable to such Person and its Related Persons.

- The definition of “Member” in current Article V(A)(8) (Article V(A)(9) of the Proposed Certificate) would be modified as follows (proposed deletions in bracket):

“*Member*” shall mean, with respect to any national securities exchange, a Person that is a “member” of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act [or, with respect to a security-based swap execution facility, a Person that is a “member” within the meaning of Rule 242.802 of Regulation SE under the Exchange Act].

- The definition of “Related Persons” in current Article V(A)(10) (Article V(A)(11) of the Proposed Certificate) would be modified as follows (proposed additions in **bold**):

(d) in the case of a Person that is a Member **or SBSEF Member**, any Person that is associated with such Person (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

(e) in the case of a Person that is a natural person and is a Member **or SBSEF Member**, any broker or dealer that is also a Member **or SBSEF Member** with which such Person is associated (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

- The definition of “SBSEF Member” would be added as new Article V(A)(12), as follows (all text new):

12. “*SBSEF Member*” means, with respect to a security-based swap execution facility, a Person that is a “member” within the meaning of Rule 242.802 of Regulation SE under the Exchange Act.

- The end of the concentration limits in Article V(B)(2) (Ownership Concentration Limitation) would be modified by deleting the following parenthetical from (c):

“(and, with respect to an Exchange that is a security-based swap execution facility, such resolution shall have been submitted to the SEC pursuant to Rule 242.806 or 242.807 of Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and

shall have become effective thereunder)”.

- A new paragraph would be added to Article V(B) as follows (all text new):

5. In addition to the limitations in subsections 1–4 above of this Section B of Article V, for so long as the Corporation shall directly or indirectly control any SBSEF, no SBSEF Member, either alone or together with its Related Persons, shall be permitted at any time to own, directly or indirectly, 20% or more of any class of voting securities or of other voting interest in the Corporation (the “*SBSEF Concentration Limitation*”). If any SBSEF Member, either alone or together with its Related Persons, at any time beneficially owns voting securities or other voting interest in the Corporation in excess of the SBSEF Concentration Limitation, such SBSEF Member and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, at a price equal to the par value of such voting securities or other voting interest and to the extent funds are legally available therefor, that number of voting securities or other voting interest of the Corporation necessary so that such SBSEF Member, together with its Related Persons, shall beneficially own, directly or indirectly, less than 20% of any class of voting securities or of other voting interest in the Corporation, after taking into account that such repurchased voting securities or other voting interest shall become treasury shares and shall no longer be deemed to be outstanding.

- The second clause of current Article V(B)(5) (Article V(B)(6) of the Proposed Certificate) would be amended as follows (proposed additions in **bold**):

provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation **or SBSEF Concentration Limitation** such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section B.4 **or B.5, as applicable**, of this ARTICLE V.

- The first sentence of current Article V(B)(6) (Article V(A)(7) of the Proposed Certificate) would be amended as follows (proposed addition in **bold**):

If any share of Common Stock shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such share of Common Stock is subject to the Concentration Limitations **and SBSEF Concentration Limitation** as set in Section B of this Article V.

- The final clause of Article V(C)(2) (Procedure for Repurchasing Stock) would be amended to add “or SBSEF Concentration Limitation” after “Concentration Limitation”.

- Subclauses (i) and (ii) of the first sentence of Article V(D) (Right to Information; Determinations by the Board of Directors) would be amended as follows (proposed deletion in brackets, proposed additions in **bold**):

(i) to be subject to the Voting Limitation, [or] the Recalculated Voting Limitation **or the SBSEF Voting Limitation**, (ii) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation **or SBSEF Concentration Limitation**,

Second, the parenthetical in the first sentence of Article IX(B) (Quorum) would be amended as follows (proposed deletions in brackets, proposed additions in **bold**): (it being understood that any shares in excess of the Voting Limitation, [or] the Recalculated Voting Limitation **or the SBSEF Voting Limitation** shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section A or Section B of ARTICLE V).

Article X (Amendments) of the Current Certificate requires any amendment to, or repeal of any provision in, the Current Certificate to be filed with, or filed with and approved by, the Commission. The final sentence would be amended to delete “(or, in the case of a security-based swap execution facility, Rule 242.806 or 242.807 under Regulation SE under the Exchange Act)” immediately following “the rules promulgated thereunder”.

Other Changes

The Exchange proposes to make changes that are conforming or technical in nature. All are non-substantive.

References to the “Seventh Amended and Restated Certificate of Incorporation” and the “Sixth Amended and Restated Certificate of

Incorporation” in the titles, introductory paragraphs, and signature lines would be changed to refer to the “Eighth Amended and Restated Certificate of Incorporation” and “Seventh Amended and Restated Certificate of Incorporation,” respectively.

The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

Paragraphs after proposed Article V(A)(4) and proposed Article V(B)(5) would be renumbered.

In Article X (Amendments), the parenthetical “(or the boards of directors of their successors)” would be deleted as unnecessary, because “Exchange” includes all ICE Holdings-controlled national securities exchanges.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(1)⁸ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Together, the Proposed Certificate and IST Rule 410⁹ is consistent with the Act and the rules promulgated under the Act.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members because none of the proposed changes to the Proposed Certificate substantively would impact the Exchange. Rather the proposed changes are solely concerned with SBSEFs and making conforming changes.

Additionally, IST has advised the Exchange that IST Rule 410 would, independently of these changes to the Proposed Certificates, provide the

means to ensure that IST is in compliance with Rule 834(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issue but rather is concerned solely with ensuring that IST is in compliance with Regulation SE and making non-substantive and conforming changes to the Current Certificate. No change is proposed to the certificate of incorporation of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b–4(f)(6)¹¹ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b–4(f)(6)¹³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁶ See the definition of “Exchange” in ICE Holdings Current Certificate of Incorporation, Article V(A)(1). No change to the definition is proposed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

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-NYSEARCA-2026-56 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-2026-56. 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-2026-56 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-11028 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105578; File Nos. SR-MIAX-2026-13, SR-PEARL-2026-15, SR-SAPPHIRE-2026-13]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Sapphire, LLC; Order Approving Proposed Rule Changes Regarding the Adoption of Listing Criteria for Options on Commodity-Based Trusts That Hold Multiple Crypto Assets

May 29, 2026.

I. Introduction

On March 30, 2026, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, and MIAX Sapphire, LLC (each an "Exchange," and collectively, the "Exchanges") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² proposed rule changes to adopt listing criteria for options on Commodity-Based Trusts that hold multiple crypto assets. The proposed rule changes were published for comment in the **Federal Register** on April 16, 2026.³ The Commission received no comments regarding the proposed rule changes. This order approves the proposed rule changes.

II. Description of the Proposed Rule Changes

Currently, Rule 402 of each Exchange allows the Exchanges to list options on shares that represent interests in a Commodity-Based Trust that meets the generic criteria of Exchange Rule 402, except that the Commodity-Based Trust holds a single crypto asset, as defined in Exchange Rule 402(i)(6)(iii), and provided that (A) the global supply of the crypto asset held by the Commodity-Based Trust has an average daily market value of at least \$700 million over the last 12 months; and (B) the crypto asset held by the Commodity-Based Trust underlies a derivatives contract that trades on a market with which the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in the Intermarket

Surveillance Group ("ISG").⁴ Each Exchange proposes to amend its Rule 402(i)(6)(iii) to allow the Exchange to list and trade options on a Commodity-Based Trust that holds multiple crypto assets. The proposals would allow the Exchanges to list and trade these options without additional approval from the Commission.⁵ Under the proposal, each crypto asset that the Commodity-Based Trust holds must meet the criteria in Exchange Rule 402(i)(6).⁶ Accordingly, each of the Commodity-Based Trust's crypto assets must: (A) have an average daily market value of at least \$700 million over the last 12 months; and (B) underlie a derivatives contract that trades on a market with which the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG.⁷ The proposed options on qualifying Commodity-Based Trusts also must satisfy the Exchanges' initial and continued listing standards currently in the Exchanges' Rules applicable to all options on exchange-traded funds ("ETFs").⁸ Rule 402(i) requires the shares of an ETF underlying listed options to trade on a national securities exchange and to be an "NMS stock," as defined in Rule 600 of Regulation NMS under the Exchange Act. In addition, the shares of an ETF must meet the listing

⁴ See Exchange Rule 402(i)(6)(iii). Exchange Rule 402(i)(6)(iii) defines the term "crypto asset" to mean "an asset that is generated, issued and/or transferred using a blockchain or similar distributive ledger technology network, including but not limited to, assets known as 'tokens,' 'digital assets,' 'virtual currencies,' and 'coins' and that relies on cryptographic protocols." See *id.*

⁵ See MIAX Notice, at 20535; Pearl Notice, at 20548; Sapphire Notice, at 20539-40.

⁶ See proposed Exchange Rule 402(i)(6)(iii).

⁷ See proposed Exchange Rule 402(i)(6)(iii). The Exchanges state that the market value for each crypto asset held by a Commodity-Based Trust will be calculated by taking the total global supply of the particular crypto asset multiplied by the token price of that asset. The Exchanges state that the total supply of a crypto asset includes all crypto assets currently issued and does not include unissued crypto assets. See MIAX Notice, at 20532; Pearl Notice, at 20546; Sapphire Notice, at 20537-38.

⁸ See MIAX Notice, at 20534; Pearl Notice, at 20549; Sapphire Notice, at 20540. In its proposal, the Exchanges refer to Commodity-Based Trust Shares as ETFs. See MIAX Notice, at 20531; Pearl Notice, at 20545; Sapphire Notice, at 20536. The Exchanges' Rules use the term "exchange-traded fund" to refer to several types of investment products, including Commodity-Based Trusts. See Exchange Rule 402(i).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 105220 (Apr. 13, 2026), 91 FR 20530 ("MIAX Notice"); Exchange Act Release No. 105221 (Apr. 13, 2026), 91 FR 20545 ("Pearl Notice"); Exchange Act Release No. 105222 (Apr. 13, 2026), 91 FR 20536 ("Sapphire Notice").

¹⁴ 17 CFR 200.30-3(a)(12).

criteria in Exchange Rule 402(a) and (b) ⁹ or Exchange Rule 402(i)(6)(i)(B).¹⁰

Proposed Exchange Rule 403(g)(3) will allow the Exchanges to suspend opening transactions in options on Commodity-Based Trust shares if any crypto asset held by the Commodity-Based Trust (A) no longer has an average daily market value of at least \$700 million over the last 12 months, as determined by the Exchange on a monthly basis; or (B) no longer underlies a derivatives contract that

⁹ See MIA X Notice, at 20532; Pearl Notice, at 20546; Sapphire Notice, at 20538. Exchange Rule 402(a) states that underlying securities with respect to which put or call options contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act; and (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. Exchange Rule 402(b) states, among other things, that, absent exceptional circumstances, an underlying security will not be selected unless: (1) there are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Exchange Act; (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months; and (5) either: (i) If the underlying security is a “covered security” as defined under Section 18(b)(1)(A) of the Securities Act of 1933: (A) the market price per share of the underlying security has been at least \$3.00 for the previous three (3) consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; however, (B) the requirements set forth in (5)(i)(A) will be waived during the three days following its initial public offering day for an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, and may be listed and traded starting on or after the second business day following the initial public offering day; or (ii) if the underlying security is not a “covered security,” the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

¹⁰ Exchange Rule 402(i)(6)(i)(B) states that the Exchange-Traded Fund Shares are available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Exchange-Traded Fund Shares, all as described in the Exchange-Traded Fund Shares’ prospectus.

trades on a market with which the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG. The Exchanges state that requiring the average daily market value criterion to be met on a monthly basis is reasonable given that the Exchanges believe that it is unlikely that a crypto asset with an average daily market value of at least \$700 million over the previous twelve months would fail to meet that standard as a result of trading over a relatively short period of time.¹¹

Options on Commodity-Based Trust shares also will be subject to the Exchange Rule 403(g).¹² Under Exchange Rule 403(g), shares of an ETF approved for options trading pursuant to Exchange Rule 402(i) would not meet the requirements for continued approval, and the Exchanges shall not open for trading any additional series of option contracts of the class covering such ETF if the shares are delisted from trading as provided in Exchange Rule 603(b)(5) or the shares are halted or suspended from trading on their primary market.¹³ Further, Exchange Rule 403(g)(4) (renumbered as Exchange Rule 403(g)(5)) would allow the Exchanges to consider suspending opening transactions in options on Commodity-Based Trust shares if such other event occurs or condition exists that in the opinion of the Exchange further dealing in the options on the Exchange is inadvisable.¹⁴

The Exchanges state that the proposed options on Commodity-Based Trust shares would trade in the same manner as other ETF options on the Exchanges and will be subject to Exchange rules that currently apply to the listing and trading of ETF options, including Exchange rules governing, for example, listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures.¹⁵ The Exchanges state that position and exercise limits for options on

Commodity-Based Trust shares will be determined pursuant to Exchange Rules 307 and 309, respectively.¹⁶

The Exchanges represent that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to the trading of options on Commodity-Based Trust shares that are approved subject to Exchange Rule 402(i)(6).¹⁷ The Exchanges state that their existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options of these options on Commodity-Based Trusts that are approved subject to Exchange Rule 402(i)(6).¹⁸ The Exchanges state that they may obtain information from designated contract markets that are members of the ISG related to a financial instrument that is based, in whole or in part, upon an interest in or performance of a crypto asset, as applicable.¹⁹ In addition, the Exchanges state that they currently lists options that would qualify for listing under proposed Exchange Rule 402(i)(6), and that it has not identified any issues with the listing and trading of these options.²⁰

The Exchanges state that both the Exchanges and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of the proposed options on the Commodity-Based Trust shares.²¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²² Specifically, the

¹⁶ See MIA X Notice, at 20533; Pearl Notice, at 20548; Sapphire Notice, at 20539.

¹⁷ See MIA X Notice, at 20533; Pearl Notice, at 20548; Sapphire Notice, at 20539.

¹⁸ See MIA X Notice, at 20533; Pearl Notice, at 20548; Sapphire Notice, at 20539.

¹⁹ See MIA X Notice, at 20533; Pearl Notice, at 20548; Sapphire Notice, at 20539.

²⁰ See MIA X Notice, at 20534; Pearl Notice, at 20548; Sapphire Notice, at 20539. The Exchanges state that they currently lists options on shares of the following funds: iShares Bitcoin Trust, the Fidelity Wise Origin Bitcoin Fund, the ARK21Shares Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF. See MIA X Notice, at 20534 n.29; Pearl Notice, at 20548 n.29; Sapphire Notice, at 20539 n.29.

²¹ See MIA X Notice, at 20533–34; Pearl Notice, at 20548; Sapphire Notice, at 20539.

²² In approving the proposed rule changes, the Commission has considered the proposed rules’

Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,²³ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

Each Exchange proposes to amend its Rule 402(i)(6)(iii) to permit the Exchanges to list options on shares of a Commodity-Based Trust that holds multiple crypto assets, provided that the Commodity-Based Trust meets certain requirements, as described above. The proposed rule changes will allow the Exchanges to list options on shares of these Commodity-Based Trusts without further approval from the Commission, thereby permitting the Exchanges to list these options soon after listing of the underlying Commodity-Based Trust shares. Permitting the listing and trading of these options on the Exchanges will provide investors with an additional vehicle for gaining and hedging exposure to the underlying Commodity-Based Trust shares.

Options on shares of Commodity-Based Trusts that hold multiple crypto assets will be subject to the same initial and continued listing requirements for options on Commodity-Based Trusts that hold a single crypto asset except that each crypto asset that a Commodity-Based Trust holds must (A) have an average daily market value of at least \$700 million over the last 12 months; and (B) underlie a derivatives contract that trades on a market with which the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG. The requirements in proposed Rule 402(i)(6)(iii) of each Exchange are designed to help ensure that each of the crypto assets that a Commodity-Based Trust holds is sufficiently liquid that the creation and redemption process for shares of the Commodity-Based Trust will operate without disruption and that Commodity-Based Trust shares will be available to options market makers and other market participants that may use Commodity-Based Trust shares to hedge their positions. The Exchanges will consider suspending opening transactions in Commodity-Based Trust share options if the requirements in

proposed Rule 403(g) of each Exchange are no longer satisfied.²⁴

The Exchanges represent that the same surveillance procedures applicable to ETF options currently listed and traded on the Exchanges will apply to the trading of options on Commodity-Based Trust shares.²⁵ Each Exchange states that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior that might arise from listing and trading options on ETFs, including the listing of options on Commodity-Based Trust shares.²⁶ As discussed above, each crypto asset held by a Commodity-Based Trust must underlie a derivatives contract that trades on a market with which the Exchanges have a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG.²⁷ This requirement, in addition to the Exchanges' existing surveillance procedures, should assist the Exchanges in investigating suspected manipulations or other trading abuses in Commodity-Based Trust share options.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule changes (SR-MIAX-2026-13, SR-PEARL-2026-15, SR-SAPPHIRE-2026-13), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11031 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0184]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Form S-6, for Registration Under the Securities Act of 1933 of Unit Investment Trusts Registered on Form N-8B-2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

²⁴ See proposed Exchange Rule 403(g)(3).

²⁵ See MIAX Notice, at 20533; Pearl Notice, at 20548; Sapphire Notice, at 20539.

²⁶ See MIAX Notice, at 20533; Pearl Notice, at 20548; Sapphire Notice, at 20539.

²⁷ See proposed Exchange Rule 402(i)(6)(iii).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

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 ("SEC" or "Commission") is soliciting Form S-6¹ is a form used for registration under the Securities Act of 1933 ("Securities Act")² of securities of any unit investment trust ("UIT") registered under the Investment Company Act of 1940 ("Investment Company Act")³ on Form N-8B-2.⁴ Section 5 of the Securities Act requires the filing of a registration statement prior to the offer of securities to the public and that the statement be effective before any securities are sold.⁵ Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities.

Section 10(a)(3) of the Securities Act provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use.⁶ As a result, most UITs update their registration statements under the Securities Act on an annual basis in order that their sponsors may continue to maintain a secondary market in the units. UITs that are registered under the Investment Company Act on Form N-8B-2 file post-effective amendments to their registration statements on Form S-6 in order to update their prospectuses.⁷ Compliance with Form S-6 is mandatory. Responses to the collection of information will not be kept confidential.

We estimate that approximately 1,014 filings on Form S-6.⁸ Based on conversations with fund representatives

¹ 17 CFR 239.16.

² 15 U.S.C. 77a *et seq.*

³ 15 U.S.C. 80a-1 *et seq.*

⁴ 17 CFR 274.12. Form N-8B-2 is the form used by UITs other than separate accounts that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor to register under the Investment Company Act pursuant to Section 8 thereof.

⁵ 15 U.S.C. 77e.

⁶ 15 U.S.C. 77j(a)(3).

⁷ Rule 35d-1 under the Investment Company Act requires registered investment companies whose names suggest a focus in a particular type of investment (among other areas) to adopt a policy to invest at least 80 percent of the value of their assets in those investments. UITs that are updating their registration statements on Form S-6 would be required to address these disclosure requirements. *Investment Company Names*, Investment Company Act Release No. 35000, (September 20, 2023).

⁸ Based on the number of Form S-6 filings made from 2023 to 2025.

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

and the Commission's experience with the filing and amending of Form S-6 and with disclosure documents generally, we estimate that the reporting burden of compliance with Form S-6 is approximately 75 hours per filing. This time is spent, for example, preparing and reviewing the registration statements. Accordingly, we calculate the total estimated annual internal burden of responding to Form S-6 to be approximately 76,050 hours. We estimate that the total cost burden of preparing and filing registration statements on Form S-6 is \$55,072,368.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC's estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic collection techniques or other forms of information technology.

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 August 3, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: June 1, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11131 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105585; File No. SR-NYSE-NAT-2026-14]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc.

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 20, 2026, NYSE National, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("ICE") to reflect regulations relating to security-based swap execution facilities ("SBSEFs") and make non-substantive and conforming changes. 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 ICE Current Certificate to reflect regulations relating to SBSEFs and make non-substantive and conforming changes.³ No change is proposed to the certificate of incorporation of the Exchange.

The changes to the ICE Current Certificate described herein would become operative upon the proposed Eighth Amended and Restated Certificate of Incorporation ("Proposed Certificate") becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Changes Related to SBSEFs
Securities and Exchange Commission ("Commission") regulations extend limitations on stockholder voting and ownership to SBSEFs.⁴ Because ICE's subsidiary ICE Swap Trade, LLC ("IST") has registered with the Commission as an SBSEF, these Commission regulations apply.

IST has adopted Rule 410 (Ownership Limitation),⁵ which IST has advised the Exchange was designed to incorporate the requirements of 17 CFR 242.834 ("Rule 834") into the rules of the SBSEF. Additionally, ICE intends to amend the Current Certificates as described below.

The Current Certificate would be amended as follows.

First, Article V (Limitations on Voting and Ownership) has limitations on stockholder voting and ownership that apply so long as ICE directly or indirectly controls a national securities exchange registered under the Act, such as the Exchange, and an SBSEF registered under the Act. The following changes would be made to Article V:

- The first sentence of Article V(A)(1) (Voting Limitation), would be amended to delete "or a security-based swap execution facility registered under Section 3D of the Exchange Act" immediately prior to (a).

³ ICE is the sole shareholder of ICE Holdings. ICE Holdings is the parent company of ICE Swap Trade, LLC. ICE Holdings is also the sole shareholder of NYSE Holdings LLC, which is the sole shareholder of NYSE Group, Inc., the parent company of the Exchange.

⁴ See 17 CFR 242.834. See also Securities Exchange Act Release No. 98845 (November 2, 2023), 88 FR 87156 (December 15, 2023) (Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities) (adopting new Regulation SE, consisting of 17 CFR 242.800 through 17 CFR 242.835), effective February 13, 2024).

⁵ See ICE Swap Trade, LLC Submission No. 25-02 (SBSF-ICES-2025-002).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

- The end of Article V(A)(2) would be modified by deleting “(and, with respect to a security-based swap execution facility registered under Section 3D of the Exchange Act, such resolution shall have been submitted to the SEC under Rule 242.806 or 242.807 under Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)” from (c).

- Article V(A)(3)(a) would be modified by deleting text from the start of (i) as follows (proposed deletions in brackets):

(i) will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act [or any security-based swap execution facility registered under Section 3D of the Exchange Act, in any case] that is directly or indirectly controlled by the Corporation (each such national securities exchange [or security-based swap execution facility] so controlled, an “Exchange”),

- A new Article V(A)(4) would be added as follows (all text is new):

In addition to the limitations in subsections 1–3 above of this Section A of Article V, for so long as the Corporation shall directly or indirectly control a security-based swap execution facility registered under Section 3D of the Exchange Act (each security-based swap execution facility so controlled, an “SBSEF”), no SBSEF Member (as defined below), either alone or together with its Related Persons, shall be entitled directly or indirectly to vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20% of the voting power of any class of securities or of other ownership interest in the Corporation (such threshold being hereinafter referred to as the “*SBSEF Voting Limitation*”), and the Corporation shall disregard any such votes purported to be cast in excess of the SBSEF Voting Limitation.

- The text after “enforced against such Record Owner” in current Article V(A)(5) (Article V(A)(6) of the Proposed Certificate) would be amended as follows (proposed deletion in brackets, proposed additions in **bold**):

in a manner that will accomplish the Voting Limitation[and], the Recalculated Voting Limitation **and the SBSEF Voting Limitation** applicable to such Person and its Related Persons.

- The definition of “Member” in current Article V(A)(8) (Article V(A)(9) of the Proposed Certificate) would be modified as follows (proposed deletions in bracket):

“*Member*” shall mean, with respect to any national securities exchange, a

Person that is a “member” of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act[or, with respect to a security-based swap execution facility, a Person that is a “member” within the meaning of Rule 242.802 of Regulation SE under the Exchange Act].

- The definition of “Related Persons” in current Article V(A)(10) (Article V(A)(11) of the Proposed Certificate) would be modified as follows (proposed additions in **bold**):

(d) in the case of a Person that is a Member **or SBSEF Member**, any Person that is associated with such Person (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

(e) in the case of a Person that is a natural person and is a Member **or SBSEF Member**, any broker or dealer that is also a Member **or SBSEF Member** with which such Person is associated (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

- The definition of “SBSEF Member” would be added as new Article V(A)(12), as follows (all text new):

12. “*SBSEF Member*” means, with respect to a security-based swap execution facility, a Person that is a “member” within the meaning of Rule 242.802 of Regulation SE under the Exchange Act.

- The end of the concentration limits in Article V(B)(2) (Ownership Concentration Limitation) would be modified by deleting the following parenthetical from (c): “(and, with respect to an Exchange that is a security-based swap execution facility, such resolution shall have been submitted to the SEC pursuant to Rule 242.806 or 242.807 of Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)”.

- A new paragraph would be added to Article V(B) as follows (all text new):

5. In addition to the limitations in subsections 1–4 above of this Section B of Article V, for so long as the Corporation shall directly or indirectly control any SBSEF, no SBSEF Member, either alone or together with its Related Persons, shall be permitted at any time to own, directly or indirectly, 20% or more of any class of voting securities or of other voting interest in the

Corporation (the “*SBSEF Concentration Limitation*”). If any SBSEF Member, either alone or together with its Related Persons, at any time beneficially owns voting securities or other voting interest in the Corporation in excess of the SBSEF Concentration Limitation, such SBSEF Member and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, at a price equal to the par value of such voting securities or other voting interest and to the extent funds are legally available therefor, that number of voting securities or other voting interest of the Corporation necessary so that such SBSEF Member, together with its Related Persons, shall beneficially own, directly or indirectly, less than 20% of any class of voting securities or of other voting interest in the Corporation, after taking into account that such repurchased voting securities or other voting interest shall become treasury shares and shall no longer be deemed to be outstanding.

- The second clause of current Article V(B)(5) (Article V(B)(6) of the Proposed Certificate) would be amended as follows (proposed additions in **bold**): provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation **or SBSEF Concentration Limitation**, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section B.4 **or B.5, as applicable**, of this ARTICLE V.

- The first sentence of current Article V(B)(6) (Article V(A)(7) of the Proposed Certificate) would be amended as follows (proposed addition in **bold**):

If any share of Common Stock shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such share of Common Stock is subject to the Concentration Limitations **and SBSEF Concentration Limitation** as set in Section B of this Article V.

- The final clause of Article V(C)(2) (Procedure for Repurchasing Stock) would be amended to add “or SBSEF Concentration Limitation” after “Concentration Limitation”.

- Subclauses (i) and (ii) of the first sentence of Article V(D) (Right to Information; Determinations by the Board of Directors) would be amended as follows (proposed deletion in

brackets, proposed additions in **bold**):

(i) to be subject to the Voting Limitation, [or] the Recalculated Voting Limitation **or the SBSEF Voting Limitation**, (ii) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation **or SBSEF Concentration Limitation**,

Second, the parenthetical in the first sentence of Article IX(B) (Quorum) would be amended as follows (proposed deletions in brackets, proposed additions in **bold**):

(it being understood that any shares in excess of the Voting Limitation, [or] the Recalculated Voting Limitation **or the SBSEF Voting Limitation** shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section A or Section B of ARTICLE V).

Article X (Amendments) of the Current Certificate requires any amendment to, or repeal of any provision in, the Current Certificate to be filed with, or filed with and approved by, the Commission. The final sentence would be amended to delete “(or, in the case of a security-based swap execution facility, Rule 242.806 or 242.807 under Regulation SE under the Exchange Act)” immediately following “the rules promulgated thereunder”.

Other Changes

The Exchange proposes to make changes that are conforming or technical in nature. All are non-substantive.

References to the “Seventh Amended and Restated Certificate of Incorporation” and the “Sixth Amended and Restated Certificate of Incorporation” in the titles, introductory paragraphs, and signature lines would be changed to refer to the “Eighth Amended and Restated Certificate of Incorporation” and “Seventh Amended and Restated Certificate of Incorporation,” respectively.

The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

Paragraphs after proposed Article V(A)(4) and proposed Article V(B)(5) would be renumbered.

In Article X (Amendments), the parenthetical “(or the boards of directors of their successors)” would be deleted as unnecessary, because

“Exchange” includes all ICE Holdings-controlled national securities exchanges.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(1)⁸ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Together, the Proposed Certificate and IST Rule 410⁹ is consistent with the Act and the rules promulgated under the Act.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members because none of the proposed changes to the Proposed Certificate substantively would impact the Exchange. Rather the proposed changes are solely concerned with SBSEFs and making conforming changes.

Additionally, IST has advised the Exchange that IST Rule 410 would, independently of these changes to the Proposed Certificates, provide the means to ensure that IST is in compliance with Rule 834(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issue but rather is concerned solely with ensuring that IST is in compliance with Regulation SE and making non-substantive and conforming changes to the Current Certificate. No change is proposed to the

certificate of incorporation of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b–4(f)(6)¹¹ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b–4(f)(6)¹³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁶ See the definition of “Exchange” in ICE Holdings Current Certificate of Incorporation, Article V(A)(1). No change to the definition is proposed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

• Send an email to rule-comments@sec.gov. Please include file number SR–NYSENAT–2026–14 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2026–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–NYSENAT–2026–14 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–11037 Filed 6–2–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105574; File No. SR–CboeEDGX–2026–037]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 13.4(a)

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 15, 2026, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 Exchange. The Exchange filed the

proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ 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. (“EDGX” or the “Exchange”) proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the planned operation of the Texas Stock Exchange LLC (“TXSE”) as a registered national securities exchange⁵ beginning between July 2, 2026, and July 17, 2026.⁶ The text of the proposed rule change is provided in Exhibit 5.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the

Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of the TXSE as a registered national securities exchange.

On September 30, 2025, the Commission approved TXSE's application to register as a national securities exchange.⁷ As part of its transition to exchange status, TXSE announced that it plans to commence trading on its exchange between July 2, 2026 and July 17, 2026.⁸ The Exchange, therefore, proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of TXSE as a registered national securities exchange beginning between July 2, 2026 and July 17, 2026. Specifically, the Exchange proposes to amend Rule 13.4(a) to include TXSE by stating it will utilize TXSE market data from the Consolidated Quotation System (“CQS”)/UTP Quotation Data Feed (“UQDF”) for purposes of order handling, routing, execution, and related compliance processes.

Additionally, on January 29, 2026, Nasdaq BX filed with the Commission a proposal to convert from a corporation organized under the laws of the state of Delaware to one organized under the laws of the state of Texas and changed its name from Nasdaq BX, LLC to Nasdaq Texas, LLC.⁹ The Exchange accordingly proposes a conforming change to its rules to replace the name of Nasdaq BX with Nasdaq Texas. Specifically, the Exchange proposes to replace one reference to “BX” in Rule 13.4(a) with “Texas.”

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)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ See Securities Exchange Act Release No. 104146 (September 30, 2025), 90 FR 47880 (October 2, 2025).

⁶ See Member Readiness and Launch Guide, dated December, 2025 (<https://www.txse.com/trading-membership/member-readiness-and-launch-guide>) (stating that TXSE anticipates that trading will commence between July 2, 2026–July 17, 2026).

⁷ *Supra* note 4.

⁸ *Supra* note 5.

⁹ See Securities Exchange Act Release No. 104736 (January 29, 2026), 91 FR 4980 (February 3, 2026) (SR–BX–2026–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Repeal the Restated Certificate of Incorporation and Adopt a Certificate of Formation and Company Agreement).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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.

The Exchange believes that its proposal to update Exchange Rule 13.4(a) to include TXSE and reference Nasdaq Texas will ensure that the Rule publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

In addition, the proposed amendments would reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand, and comply with the Exchange's rules. The Exchange also believes that the proposed amendments remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule changes may become operative upon filing. In the filing, the Exchange stated it is proposing these changes to reflect the launch of TXSE as a national securities exchange and reflect the name change of Nasdaq BX to Nasdaq Texas that will allow the Exchange to identify on a market-by-market basis all the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The Commission has published a similar prior proposed rule change by the Exchange to disclose via its rules the data feeds it currently utilizes for order handling, routing, execution, and related compliance processes.¹⁶ The

proposed rule changes do not raise any novel issues, and waiver of the operative delay allows for the immediate clarification of the Exchange's rules to reflect these changes. Therefore, waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁷

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-2026-037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2026-037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6)

¹⁵ 17 CFR 240.19b-4(f)(6)(iii)

¹⁶ See Securities Exchange Act Release No. 104077 (September 25, 2025), 90 FR 46944 (September 30, 2025) (SR-CboeEDGX-2025-074).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–2026–037 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–11027 Filed 6–2–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105586; File No. SR–NYSEAMER–2026–45]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc.

May 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 20, 2026, NYSE American LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 amend the Seventh Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. (“ICE”) to reflect regulations relating to security-based swap execution facilities (“SBSEFs”) and make non-substantive and conforming changes. 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 ICE Current Certificate to reflect regulations relating to SBSEFs and make non-substantive and conforming changes.³ No change is proposed to the operating agreement of the Exchange.

The changes to the ICE Current Certificate described herein would become operative upon the proposed Eighth Amended and Restated Certificate of Incorporation (“Proposed Certificate”) becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Changes Related to SBSEFs

Securities and Exchange Commission (“Commission”) regulations extend limitations on stockholder voting and ownership to SBSEFs.⁴ Because ICE’s subsidiary ICE Swap Trade, LLC (“IST”) has registered with the Commission as an SBSEF, these Commission regulations apply.

IST has adopted Rule 410 (Ownership Limitation),⁵ which IST has advised the Exchange was designed to incorporate the requirements of 17 CFR 242.834 (“Rule 834”) into the rules of the SBSEF. Additionally, ICE intends to

³ ICE is the sole shareholder of ICE Holdings. ICE Holdings is the parent company of ICE Swap Trade, LLC. ICE Holdings is also the sole shareholder of NYSE Holdings LLC, which is the sole shareholder of NYSE Group, Inc., the parent company of the Exchange.

⁴ See 17 CFR 242.834. See also Securities Exchange Act Release No. 98845 (November 2, 2023), 88 FR 87156 (December 15, 2023) (Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities) (adopting new Regulation SE, consisting of 17 CFR 242.800 through 17 CFR 242.835), effective February 13, 2024).

⁵ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

amend the Current Certificates as described below.

The Current Certificate would be amended as follows.

First, Article V (Limitations on Voting and Ownership) has limitations on stockholder voting and ownership that apply so long as ICE directly or indirectly controls a national securities exchange registered under the Act, such as the Exchange, and an SBSEF registered under the Act. The following changes would be made to Article V:

- The first sentence of Article V(A)(1) (Voting Limitation), would be amended to delete “or a security-based swap execution facility registered under Section 3D of the Exchange Act” immediately prior to (a).

- The end of Article V(A)(2) would be modified by deleting “(and, with respect to a security-based swap execution facility registered under Section 3D of the Exchange Act, such resolution shall have been submitted to the SEC under Rule 242.806 or 242.807 under Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder)” from (c).

- Article V(A)(3)(a) would be modified by deleting text from the start of (i) as follows (proposed deletions in brackets):

(i) will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act [or any security-based swap execution facility registered under Section 3D of the Exchange Act, in any case] that is directly or indirectly controlled by the Corporation (each such national securities exchange [or security-based swap execution facility] so controlled, an “Exchange”),

- A new Article V(A)(4) would be added as follows (all text is new):

In addition to the limitations in subsections 1–3 above of this Section A of Article V, for so long as the Corporation shall directly or indirectly control a security-based swap execution facility registered under Section 3D of the Exchange Act (each security-based swap execution facility so controlled, an “SBSEF”), no SBSEF Member (as defined below), either alone or together with its Related Persons, shall be entitled directly or indirectly to vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20% of the voting power of any class of securities or of other ownership interest in the Corporation (such threshold being hereinafter referred to as the “SBSEF Voting Limitation”), and the Corporation shall disregard any such

¹⁸ 17 CFR 200.30–3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

votes purported to be cast in excess of the SBSEF Voting Limitation.

- The text after “enforced against such Record Owner” in current Article V(A)(5) (Article V(A)(6) of the Proposed Certificate) would be amended as follows (proposed deletion in brackets, proposed additions double underlined): in a manner that will accomplish the Voting Limitation[and], the Recalculated Voting Limitation *and the SBSEF Voting Limitation* applicable to such Person and its Related Persons.

- The definition of “Member” in current Article V(A)(8) (Article V(A)(9) of the Proposed Certificate) would be modified as follows (proposed deletions in bracket):

“Member” shall mean, with respect to any national securities exchange, a Person that is a “member” of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act[or, with respect to a security-based swap execution facility, a Person that is a “member” within the meaning of Rule 242.802 of Regulation SE under the Exchange Act].

- The definition of “Related Persons” in current Article V(A)(10) (Article V(A)(11) of the Proposed Certificate) would be modified as follows (proposed additions double underlined):

(d) in the case of a Person that is a Member *or SBSEF Member*, any Person that is associated with such Person (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

(e) in the case of a Person that is a natural person and is a Member *or SBSEF Member*, any broker or dealer that is also a Member *or SBSEF Member* with which such Person is associated (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act (with references therein to a national securities exchange being deemed to include a security-based swap execution facility));

- The definition of “SBSEF Member” would be added as new Article V(A)(12), as follows (all text new):

12. “*SBSEF Member*” means, with respect to a security-based swap execution facility, a Person that is a “member” within the meaning of Rule 242.802 of Regulation SE under the Exchange Act.

- The end of the concentration limits in Article V(B)(2) (Ownership Concentration Limitation) would be modified by deleting the following parenthetical from (c): “(and, with

respect to an Exchange that is a security-based swap execution facility, such resolution shall have been submitted to the SEC pursuant to Rule 242.806 or 242.807 of Regulation SE under the Exchange Act, shall have been approved by the SEC (if applicable) and shall have become effective thereunder”).

- A new paragraph would be added to Article V(B) as follows (all text new):

5. In addition to the limitations in subsections 1–4 above of this Section B of Article V, for so long as the Corporation shall directly or indirectly control any SBSEF, no SBSEF Member, either alone or together with its Related Persons, shall be permitted at any time to own, directly or indirectly, 20% or more of any class of voting securities or of other voting interest in the Corporation (the “*SBSEF Concentration Limitation*”). If any SBSEF Member, either alone or together with its Related Persons, at any time beneficially owns voting securities or other voting interest in the Corporation in excess of the SBSEF Concentration Limitation, such SBSEF Member and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, at a price equal to the par value of such voting securities or other voting interest and to the extent funds are legally available therefor, that number of voting securities or other voting interest of the Corporation necessary so that such SBSEF Member, together with its Related Persons, shall beneficially own, directly or indirectly, less than 20% of any class of voting securities or of other voting interest in the Corporation, after taking into account that such repurchased voting securities or other voting interest shall become treasury shares and shall no longer be deemed to be outstanding.

- The second clause of current Article V(B)(5) (Article V(B)(6) of the Proposed Certificate) would be amended as follows (proposed additions **IN BOLD**): provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation *or SBSEF Concentration Limitation*, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section B.4 *or B.5, as applicable*, of this ARTICLE V.

- The first sentence of current Article V(B)(6) (Article V(A)(7) of the Proposed Certificate) would be amended as

follows (proposed addition double underlined):

If any share of Common Stock shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such share of Common Stock is subject to the Concentration Limitations *and SBSEF Concentration Limitation* as set in Section B of this Article V.

- The final clause of Article V(C)(2) (Procedure for Repurchasing Stock) would be amended to add “or SBSEF Concentration Limitation” after “Concentration Limitation”.

- Subclauses (i) and (ii) of the first sentence of Article V(D) (Right to Information; Determinations by the Board of Directors) would be amended as follows (proposed deletion in brackets, proposed additions double underlined):

(i) to be subject to the Voting Limitation, [or] the Recalculated Voting Limitation *or the SBSEF Voting Limitation*, (ii) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation *or SBSEF Concentration Limitation*,

Second, the parenthetical in the first sentence of Article IX(B) (Quorum) would be amended as follows (proposed deletions in brackets, proposed additions double underlined): (it being understood that any shares in excess of the Voting Limitation, [or] the Recalculated Voting Limitation *or the SBSEF Voting Limitation* shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section A or Section B of ARTICLE V).

Article X (Amendments) of the Current Certificate requires any amendment to, or repeal of any provision in, the Current Certificate to be filed with, or filed with and approved by, the Commission. The final sentence would be amended to delete “(or, in the case of a security-based swap execution facility, Rule 242.806 or 242.807 under Regulation SE under the Exchange Act)” immediately following “the rules promulgated thereunder”.

Other Changes

The Exchange proposes to make changes that are conforming or technical in nature. All are non-substantive.

References to the “Seventh Amended and Restated Certificate of Incorporation” and the “Sixth Amended and Restated Certificate of Incorporation” in the titles, introductory paragraphs, and signature lines would be changed to refer to the “Eighth Amended and Restated Certificate of Incorporation” and “Seventh Amended and Restated Certificate of Incorporation,” respectively.

The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

Paragraphs after proposed Article V(A)(4) and proposed Article V(B)(5) would be renumbered.

In Article X (Amendments), the parenthetical “(or the boards of directors of their successors)” would be deleted as unnecessary, because “Exchange” includes all ICE Holdings-controlled national securities exchanges.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(1)⁸ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Together, the Proposed Certificate and IST Rule 410⁹ is consistent with the Act and the rules promulgated under the Act.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members because none of the proposed changes to the Proposed Certificate substantively would impact the Exchange. Rather the proposed changes are solely concerned with SBSEFs and making conforming changes.

⁶ See the definition of “Exchange” in ICE Holdings Current Certificate of Incorporation, Article V(A)(1). No change to the definition is proposed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ See ICE Swap Trade, LLC Submission No. 25–02 (SBSF–ICES–2025–002).

Additionally, IST has advised the Exchange that IST Rule 410 would, independently of these changes to the Proposed Certificates, provide the means to ensure that IST is in compliance with Rule 834(b).

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issue but rather is concerned solely with ensuring that IST is in compliance with Regulation SE and making non-substantive and conforming changes to the Current Certificate. No change is proposed to the operating agreement of the Exchange.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b–4(f)(6)¹¹ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b–4(f)(6)¹³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings 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–NYSEAMER–2026–45 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–2026–45. 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–2026–45 and should be submitted on or before June 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–11039 Filed 6–2–26; 8:45 am]

BILLING CODE 8011–01–P

¹⁴ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION**[OMB Control No. 3235-0434]****Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 15g-2**

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 ("SEC" or "Commission") is soliciting comments on the proposed collection of information provided for in Rule 15g-2 (17 CFR 240.15g-2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

In adopting Rule 15g-2, the Commission sought to combat the unscrupulous, high-pressure sales tactics of certain broker-dealers by imposing objective and readily reviewable requirements on the process by which customers are induced to purchase low-priced stocks:¹

- Rule 15g-2(a) prohibits a broker-dealer from effecting a transaction in a penny stock for, or with, the account of a customer unless, prior to effecting the first such transaction, the broker-dealer: (1) provides to the customer a disclosure document containing, among other things, the information set forth in Schedule 15G under the Exchange Act ("penny stock disclosure document"); and (2) receives a signed and dated acknowledgement of receipt of that document by the customer. The penny stock disclosure document gives several important warnings to investors concerning the penny stock market, and cautions investors against making a hurried investment decision;

- Rule 15g-2(b) prohibits a broker-dealer from effecting a transaction in any penny stock for, or with, the account of a customer less than two business days after the broker-dealer sends the customer the penny stock disclosure document;

- Rule 15g-2(c) requires broker-dealers to maintain a copy of a customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place; and

- Rule 15g-2(d) requires a broker-dealer, upon request of a customer, to

furnish the customer with a copy of certain information set forth on the Commission's website.

The Commission estimates that approximately 162 broker-dealers are engaged in penny stock transactions and that each of these firms processes an average of three new customers for penny stocks per week (52 weeks per year $\times$ 3 transactions per week = 156 transactions per year). The Commission further estimates that half (or 81) of the broker-dealers send the penny stock disclosure documents by mail, and the other half send them through electronic means such as email. Because the Commission estimates that the copying and mailing of the penny stock disclosure document takes approximately two minutes, there is an aggregate annual burden of approximately 421.2 hours (2 minutes per response $\times$ 1 hour per 60 minutes $\times$ 156 responses per respondent $\times$ 81 respondents) for this third-party disclosure burden. Additionally, because the Commission estimates that sending the penny stock disclosure document electronically takes approximately one minute, there is an aggregate annual burden of approximately 210.6 hours (1 minutes per response $\times$ 1 hour per 60 minutes $\times$ 156 responses per respondent $\times$ 81 respondents) for this third-party disclosure burden.

Broker-dealers also incur a recordkeeping burden of approximately two minutes per response when processing penny stock disclosure documents as required pursuant to Rule 15g-2(c). As such, respondents incur an aggregate annual recordkeeping burden of approximately 842.4 hours (2 minutes per response $\times$ 1 hour per 60 minutes $\times$ 156 responses per respondent $\times$ 162 respondents) for this recordkeeping burden.

In addition, approximately 25% of the 156 customers who receive a penny stock disclosure document from their broker-dealer each year also request that their broker-dealer provides them with the additional information under Rule 15g-2(d), for a total of 39 customers per year (156 respondents per year $\times$ 0.25). Because the Commission estimates that the copying and mailing of the disclosure document containing the additional information takes approximately two minutes, there is an aggregate annual burden of approximately 210.6 hours (2 minutes per customer $\times$ 1 hour per 60 minutes $\times$ 39 customers per respondent $\times$ 162 respondents) for this third-party disclosure burden.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB Control Number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC's estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic collection techniques or other forms of information technology.

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 August 3, 2026.

Dated: June 1, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-11129 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21507 and #21508; OREGON Disaster Number OR-20021]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA-4907-DR), dated April 7, 2026.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

DATES: Issued on May 28, 2026.

Incident Period: December 15, 2025 through December 21, 2025.

Physical Loan Application Deadline Date: June 10, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: January 7, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, Office of Disaster

¹ See Exchange Act Release No. 51983 (Jul. 7, 2005), 70 FR 40613 (Jul. 13, 2005).

Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oregon, dated April 7, 2026, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Clatsop, Wasco.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026-11056 Filed 6-2-26; 8:45 am]

BILLING CODE 8026-09-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2025-0684]

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: Social Security Administration.

ACTION: Notice announcing the continuance of 2025 civil monetary penalties (CMP) levels for calendar year 2026.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) requires us to annually adjust the level of CMPs for inflation based on the Consumer Price Index (CPI-U) and provide notice concerning these new amounts. We are providing notice that we will continue to use the 2025 civil monetary penalty levels as applicable through January 14, 2027.

FOR FURTHER INFORMATION CONTACT: Jessica Stubbs Platt, Deputy Counsel to the Inspector General, Room 3-ME-1, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 816-4054. For information on eligibility or filing for benefits, call the Social Security Administration's national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit the Social Security Administration's internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: On June 27, 2016, pursuant to the 2015 Act,¹ we

published an interim final rule to adjust the level of CMPs under Sections 1129 and 1140 of the Social Security Act, 42 U.S.C. 1320a-8 and 1320b-10, respectively, with an initial "catch-up" adjustment effective August 1, 2016.² We announced in the interim final rule that for any future adjustments, we would publish a notice in the **Federal Register** to announce the new amounts. The annual inflation adjustment in subsequent years must be a cost-of-living adjustment based on any increases in the October CPI-U data from the Bureau of Labor Statistics (not seasonally adjusted) each year.³ We last updated the maximum penalty amounts effective January 15, 2025.⁴

On April 17, 2026, the Office of Management and Budget (OMB) published Memorandum M-26-11, *Cancellation of Penalty Inflation Adjustments for 2026, Regarding the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*.⁵ This Memorandum, among other provisions, announced to the Heads of Executive Departments and Agencies that due to the government shutdown in the fall of 2025,⁶ the Bureau of Labor Statistics was unable to produce the October 2025 data informing the CPI-U, which is necessary to make adjustments under the 2015 Act. Consequently, agencies are instructed to continue

² See 81 FR 41438, <https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties>.

³ See OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-16-06, p. 1 (February 24, 2016), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2016/m-16-06.pdf. See also 81 FR 41438, <https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties>.

⁴ See 89 FR 105674, <https://www.federalregister.gov/documents/2024/12/27/2024-30791/notice-on-penalty-inflation-adjustments-for-civil-monetary-penalties>.

⁵ See OMB Memorandum, Cancellation of Penalty Inflation Adjustments for 2026, Regarding the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-26-11, (April 17, 2026), <https://www.whitehouse.gov/wp-content/uploads/2026/04/M-26-11-Cancellation-of-Penalty-Inflation-Adjustments-for-2026-Regarding-the-Federal-Civil-Penalties-Inflation-Adjustment-Act-Improvements-Act-of-2015.pdf>.

⁶ The federal government experienced a funding gap beginning on October 1, 2025—the start of FY 2026—and ending when the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 (Pub. L. 119-37), was signed into law on November 12, 2025. The funding gap resulted in a "government shutdown" and the furlough of employees who were not excepted. See The 2025 (FY2026) Government Shutdown: Economic Effects | [Congress.gov](https://congress.gov) | Library of Congress.

using the 2025 CMP levels as applicable.⁷

Based on OMB's guidance, we will continue to apply the 2025 penalty levels throughout calendar year 2026 until January 14, 2027.

Mark Steffensen,

General Counsel, Social Security Administration.

[FR Doc. 2026-11050 Filed 6-2-26; 8:45 am]

BILLING CODE 4191-02-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36919]

Galveston Railroad, L.P.—Lease and Operation Exemption—Board of Trustees of the Galveston Wharves

Galveston Railroad, L.P. (GVSR), a Class III rail carrier and wholly owned subsidiary of Genesee & Wyoming Inc., has filed a verified notice of exemption under 49 CFR 1150.41 to lease from the Board of Trustees of the Galveston Wharves (GW) and to operate the track in and around the Port of Galveston, Tex. (the Line).¹

According to the verified notice, Galveston Railway, Inc. (GRI) first received authority to operate the Line in 1987,² and GVSR subsequently acquired GRI.³ GVSR and GW entered into a 20-year lease for GVSR to operate the Line in 2006, but GVSR never obtained Board authority to enter into that lease agreement or any subsequent lease amendments.

GVSR states that it is now seeking Board authority to enter into a lease amendment (Lease Amendment) extending the term of the 2006 lease by one year with a provision that automatically renews the Lease Amendment for two additional one-year periods. GVSR states that it will continue to operate over the Line as a common carrier.

GVSR certifies that the Lease Amendment does not include any interchange commitments. Further, GVSR certifies that its projected annual

⁷ See OMB Memorandum, Cancellation of Penalty Inflation Adjustments for 2026, Regarding the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-26-11, (April 17, 2026), <https://www.whitehouse.gov/wp-content/uploads/2026/04/M-26-11-Cancellation-of-Penalty-Inflation-Adjustments-for-2026-Regarding-the-Federal-Civil-Penalties-Inflation-Adjustment-Act-Improvements-Act-of-2015.pdf>.

¹ The verified notice indicates that no mileposts exist for the Line.

² *Galveston Ry.—Lease & Operation of Rail Lines of Galveston Wharves*, FD 31141 (ICC served Nov. 5, 1987).

³ *Galveston R.R.—Acquis. & Operation Exemption—Galveston Ry.*, FD 31869 (Sub-No. 1) (ICC served July 5, 1991).

¹ See Public Law 114-74; 129 Stat. 584. See also 81 FR 41438, <https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties>.

revenues from this transaction will not exceed \$5 million and will not exceed those that would qualify it as a Class III carrier.

The earliest this transaction may be consummated is June 17, 2026, the effective date of the exemption (30 days after the verified notice was filed).

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 to stay must be filed no later than June 10, 2026 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36919, should 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 GVSR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

According to GVSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 29, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2026-11041 Filed 6-2-26; 8:45 am]

BILLING CODE 4915-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2026-0364]

Initiation of Section 301 Investigation and Request for Public Comments: Vietnam's Acts, Policies, and Practices Related to Intellectual Property Protection and Enforcement

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Initiation of investigation; proposed determination; and request for comments.

SUMMARY: Pursuant to section 182(a)(2) of the Trade Act of 1974, as amended (Trade Act), the U.S. Trade Representative (Trade Representative) identified Vietnam as a priority foreign country due to Vietnam's denial of

adequate and effective protection of intellectual property (IP) rights and its denial of fair and equitable market access to persons that rely on IP protection. Pursuant to section 302(b)(2) of the Trade Act, the Trade Representative is initiating a Section 301 investigation of the acts, policies, and practices of the Government of Vietnam related to IP protection and enforcement that resulted in the identification of Vietnam as a priority foreign country. The Office of the U.S. Trade Representative (USTR) proposes to determine that these acts, policies, and practices are actionable under section 301(b). USTR invites interested persons to submit written comments concerning the issues covered in the investigation.

DATES:

April 30, 2026: The Trade Representative identified Vietnam as a priority foreign country in the 2026 Special 301 Report.

May 29, 2026: The Trade Representative initiated a Section 301 investigation.

May 29, 2026: USTR will open the docket for submission of written comments.

July 2, 2026, at 11:59 p.m. EDT: To be assured of consideration, submit written comments by this date.

ADDRESSES: Submit documents in response to this notice through the online USTR portal: <https://comments.ustr.gov/s/>.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning comments, contact the USTR Section 301 support line at (202) 395-5725. Direct all other questions regarding this notice to Megan Grimball, Chair of the Section 301 Committee, or Christina Olson, Senior Associate General Counsel, at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

I. Identification of Vietnam as a Priority Foreign Country

Section 182 of the Trade Act (19 U.S.C. 2242) ("Special 301") authorizes the Trade Representative to identify foreign countries that deny adequate and effective protection of IP rights or that deny fair and equitable market access to persons that rely on IP protection. In making Special 301 determinations, USTR chairs the Special 301 committee of the statutory, interagency Trade Policy Staff Committee (TPSC), which reviews information from many sources, including written submissions from the public and a public hearing, and makes recommendations to the Trade

Representative on Special 301 country identifications.

Under section 182(b) of the Trade Act (19 U.S.C. 2242), the Trade Representative shall only identify as "priority foreign countries" those foreign countries (1) that "have the most onerous or egregious acts, policies, or practices"; (2) whose acts, policies, and practices "have the greatest adverse impact (actual or potential) on the relevant United States products"; and (3) that "are not entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations," to provide adequate and effective protection for IP rights. Section 182 provides that identification of priority foreign countries shall take into account the history of IP laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States to achieve adequate and effective protection and enforcement of IP rights.

In the April 30, 2026, Special 301 Report, the Trade Representative identified Vietnam as a priority foreign country. The 2026 Special 301 review found that Vietnam has demonstrated a persistent failure to resolve long-standing concerns about IP protection and enforcement. USTR first approached Vietnam in 2020 with a proposal for an IP Work Plan to address issues identified in the 2020 Special 301 Report, which Vietnam minimally engaged on. USTR supplemented its outreach to address these long-standing IP protection and enforcement concerns by sending Vietnam a revised IP Work Plan proposal in 2023. However, Vietnam failed to make meaningful progress on these issues in subsequent bilateral engagement, as well as in recent negotiations for an Agreement on Reciprocal, Fair, and Balanced Trade. The 2026 Special 301 Report also finds that Vietnam's weak IP protection and enforcement harms the industries reliant on IP protection both in Vietnam's market and in other markets as well.

A full discussion of the basis for Vietnam's designation as a priority foreign country is set out in the April 30, 2026, Special 301 Report, which may be found at <https://ustr.gov/sites/default/files/files/Press/Releases/2026/2026%20Special%20301%20Report.pdf>. A summary of the basis for identification is set out below.

The first ground for the Trade Representative's identification of Vietnam as a priority foreign country is the failure to provide persistent and effective enforcement to combat online

piracy. The United States has repeatedly raised strong concerns about Vietnam's role in online piracy worldwide. Vietnam remains a significant source of online piracy and continues to host popular English-language copyright infringement sites and services that target a global audience. Some of these sites provide piracy services, including extensive libraries of pirated movies and TV shows. A locally popular cyberlocker offering such services operates within Vietnam. The operators of these sites and services likely based themselves in Vietnam because Vietnam's IP enforcement efforts have historically lacked the follow-through and substantial penalties needed to deter infringement. Stakeholders report that Vietnam has the highest incidence of online piracy in the Asia-Pacific region, has high levels of music piracy, and is ranked eighth in the world for piracy of certain mobile video games.

Despite Vietnam having criminal laws that provide for substantial fines and years of incarceration for copyright infringement, the defendants in recent criminal prosecutions received suspended sentences and were only ordered to pay relatively low financial penalties. Other obstacles to effective criminal enforcement in Vietnam include the lack of clarity regarding the threshold for criminal enforcement under amendments to the *2015 Penal Code*, including the proof required to meet that threshold, and regarding how to handle intangible evidence, such as digital assets and domain names. Vietnam's continued reliance on administrative enforcement actions over civil or criminal enforcement has been another long-standing concern, particularly as administrative enforcement does not have the same deterrent effect as civil remedies and criminal penalties. Right holders face informal pressure from enforcement authorities to submit complaints for administrative enforcement proceedings instead of directly pursuing civil enforcement or obtaining a referral for criminal enforcement.

The second ground for Vietnam's identification as a priority foreign country is the failure to provide sufficient enforcement against widespread counterfeiting. Counterfeit goods—both locally manufactured and imported—remain widely available and openly sold in physical markets, which persist in major urban and tourist centers. Counterfeit goods are widespread and increasingly sold through e-commerce platforms and through the use of livestream videos. Stakeholders report the dangerous spread of fraudulent listings on e-

commerce platforms for counterfeit products with health and safety risks, such as counterfeit milk, food, and supplements.

In 2025, Vietnam underwent a significant reorganization of its government, and stakeholders report that this transition has resulted in gaps in enforcement that counterfeit sellers have exploited. Even with multiple enforcement campaigns, administrative enforcement in physical markets and online markets decreased in 2025, with the number of violations found by Vietnamese authorities involving IP-infringing goods and goods of unknown origin or inferior quality declining by 50 percent compared to 2024. Vietnam's continued reliance on administrative enforcement actions over civil or criminal enforcement has been a long-standing concern, particularly as administrative enforcement does not have the same deterrent effect as civil remedies and criminal penalties. Weak enforcement against counterfeiting has also been due to poor coordination among ministries and agencies responsible for enforcement, delays in initiating enforcement actions, and the lack of familiarity with trademark law among police, prosecutors, and judges.

The third ground for Vietnam's identification is the lack of effective border enforcement, including failure to utilize *ex officio* authority for IP seizures and lack of *ex officio* authority over in-transit goods. Vietnam's Department of Customs has demonstrated a lack of consistency in enforcement at the border over the years, and some stakeholders report a lack of transparency and communication. Notably, the Department of Customs has possessed *ex officio* authority to suspend customs procedures for suspected pirated and counterfeit goods at the border since the 2022 amendments to the *Intellectual Property Law* but has rarely exercised that authority. Moreover, Vietnam's laws and decrees do not provide this authority with respect to in-transit goods.

The fourth ground is the lack of enforcement actions against unlicensed software use. Vietnam has been recognized by stakeholders as a rapidly growing technology hub in the region. At the same time, Vietnamese authorities reportedly have not conducted significant enforcement against the use of unlicensed software by corporate end users in the past three years. The lack of deterrence has resulted in widespread use of unlicensed software.

The fifth ground is the lack of criminal measures against cable and

satellite signal theft. Although Article 35 of Vietnam's *Intellectual Property Law* was amended in 2022 to define infringement of related rights with respect to the unauthorized decoding of encrypted program-carrying satellite signals, the corresponding provision in Vietnam's *Criminal Law* has not been amended to provide criminal penalties with respect to such signals. The *Intellectual Property Law* and *Criminal Law* also do not expressly address cable signal theft.

II. Initiation of Section 301 Investigation

Under Section 302(b)(2) of the Trade Act (19 U.S.C. 2412(b)(2)), the Trade Representative shall initiate an investigation under Chapter 1 of Title III of the Trade Act (commonly referred to as "Section 301") with respect to any act, policy, or practice that was the basis of the identification of a country as a priority foreign country under section 182 of the Trade Act (19 U.S.C. 2242). Section 302(b)(2) provides exceptions where such acts, policies, and practices are already subject to investigation or action under Section 301, or where an investigation would not be in the national economic interest.

Pursuant to Section 302(b)(2), and taking into account the advice of the Special 301 committee of the TPSC and appropriate advisory committees, on May 29, 2026, the Trade Representative initiated a Section 301 investigation of the acts, policies, and practices of Vietnam related to IP protection and enforcement that resulted in the priority foreign country identification.

The investigation will examine whether these acts, policies, and practices of Vietnam are actionable under section 301(b) of the Trade Act (19 U.S.C. 2411(b)), and, if so, what action the Trade Representative should take under Section 301(b). Acts, policies, or practices of a foreign country are actionable under section 301(b) if they are unreasonable or discriminatory, and burden or restrict U.S. commerce. Under section 301(d)(3)(B)(i)(II) of the Trade Act (19 U.S.C. 2411(d)(3)(B)(i)(II)), unreasonable acts, policies, or practices include any act, policy, or practice which denies fair and equitable provision of adequate and effective protection of IP rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Furthermore, under section 301(d)(3)(B)(i)(III) of the Trade Act (19 U.S.C. 2411(d)(3)(B)(i)(III)), unreasonable acts, policies, or practices

also include those which deny fair and equitable nondiscriminatory market access opportunities for persons that rely upon IP protection.

Pursuant to Section 303(a) of the Trade Act (19 U.S.C. 2413(a)), USTR is requesting consultations with the Government of Vietnam. Because the issues under investigation do not involve a trade agreement, the request for consultations does not involve formal dispute settlement procedures under a trade agreement.

If the Trade Representative determines that unreasonable or discriminatory acts, policies, and practices exist that burden or restrict U.S. commerce, the Trade Representative also will determine under Section 304(a)(1)(B) (19 U.S.C. 2414(a)(1)(B)) what action, if any, to take.

Section 304(a)(3)(A) of the Trade Act (19 U.S.C. 2414(a)(3)(A)) provides that in an investigation initiated pursuant to a priority foreign country designation, and not involving a trade agreement, the Trade Representative shall make the determinations under section 304(a)(1)(A) and (B) no later than six months after the date of initiation. Under Section 304(a)(3)(B) (19 U.S.C. 2414(a)(3)(B)), in certain circumstances the Trade Representative may extend the investigation for an additional three months.

III. Proposed Determination on Actionability

In light of Vietnam's persistent failure to resolve long-standing concerns about IP protection and enforcement, and its identification as a priority foreign country in the Special 301 process, the Trade Representative proposes to determine that the acts, policies, and practices of the Government of Vietnam related to IP protection and enforcement that resulted in the identification of Vietnam as a priority foreign country are actionable under section 301(b) (19 U.S.C. 2411(b)).

IV. Request for Public Comments

USTR invites comments regarding:

- The acts, policies, and practices described in Section I above.
- Information on other acts, policies, and practices of Vietnam related to the denial of adequate and effective protection of IP rights and the denial of fair and equitable market access to persons that rely on IP protection.
- Whether the acts, policies, and practices of Vietnam are unreasonable or discriminatory.
- Whether the acts, policies, and practices of Vietnam burden or restrict U.S. commerce, and if so, the nature and

level of burden or restriction on U.S. commerce.

- Whether the acts, policies, and practices of Vietnam are actionable under section 301(b) of the Trade Act, and what action, if any, should be taken, including tariff and non-tariff actions.

To be assured of consideration, USTR must receive written comments by 11:59 p.m. EDT on July 2, 2026. Additional instructions on how to submit written comments are provided below in Part V.

V. Submissions Instructions

Interested persons must submit written comments using the appropriate docket on the portal at <https://comments.ustr.gov/s/>. To make a submission, use the docket on the portal entitled 'Request for Comments on the Section 301 Investigation Regarding Vietnam's Identification as a Priority Foreign Country,' docket number USTR-2026-0364.

You do not need to establish an account to submit comments. The first screen allows you to enter identification and contact information. Third party organizations such as law firms, trade associations, or customs brokers should identify the full legal name of the organization they represent and identify the primary point of contact for the submission. Information fields are optional. However, USTR may not consider your comment if insufficient information is provided. Fields with a gray Business Confidential Information (BCI) notation are for BCI information that will not be made publicly available. Fields with a green (Public) notation will be viewable by the public. After entering the identification and contact information, you can complete the remainder of the comment, or any portion of it, by clicking 'Next.' You may upload documents at the end of the form and indicate whether USTR should treat the documents as business confidential or public information. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that the information would not customarily be released to the public. Parties uploading attachments containing BCI also must submit a public version of their comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section 301 support line at (202) 395-5725 to discuss whether alternative arrangements are possible. USTR will post attachments uploaded to

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

Jennifer Thornton,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2026-11043 Filed 6-2-26; 8:45 am]

BILLING CODE 3390-F4-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2026-0199]

Parts and Accessories Necessary for Safe Operation; Application for Exemption From Truck-Lite Co. LLC

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Truck-Lite Co. LLC's (Truck-Lite) application for a limited 5-year exemption to allow motor carriers to install Truck-Lite and/or sister company ECCO auxiliary amber brake-activated pulsating lamps on the rear of commercial motor vehicles (CMVs) in addition to the steady-burning brake lamps required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: The exemption is effective May 29, 2026 and expires June 3, 2031.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Mechanical Engineer, FMCSA Vehicle and Roadside Operations Division, Office of Carrier, Driver and Vehicle Safety Standards; MCPSV@dot.gov. If you have any questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2026-0199/document> and choose the document to review. To view comments, click this notice, then click "Document Comments." If you do not have access to the internet, you may

view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, W58–213, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews applications, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the exempted parties will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

FMCSA requires in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) shall be steady-burning with the exception of turn signal lamps; hazard warning signal lamps; school bus warning lamps; amber warning lamps or flashing warning lamps on tow trucks and commercial motor vehicles transporting oversized loads; and warning lamps on emergency and service vehicles authorized by State or local authorities.

Applicant's Request

Truck-Lite's application for exemption was described in detail in a **Federal Register** notice published on February 18, 2026 (91 FR 7621) and will not be repeated as the facts have not changed.

IV. Public Comments

FMCSA received eighteen comments in response to the Truck-Lite application for exemption. Thirteen commenters supported the request, while five opposed it or raised concerns.

Supporters included Summit Fleet Services/DFW Reefer, Maverick Transportation, LLC, PITT OHIO, the American Trucking Associations (ATA), and several other fleet operators and individuals. These commenters stated that brake-activated pulsating lamps improve rear conspicuity and enhance safety by increasing driver awareness and reducing the likelihood of rear-end collisions. Summit Fleet Services/DFW Reefer and Brad Umphress referenced operational experience indicating reductions in rear-end crashes following the installation of pulsating or flashing rear lighting systems. Maverick Transportation, LLC, Tim Gates, and ATA cited research suggesting that modulated lighting is more attention-getting than steady-burning lamps and can improve driver reaction time, particularly in conditions involving low visibility, adverse weather, or high levels of driver distraction. Oakley Transport Inc., PITT OHIO, Case Farms Ohio, and Steve Enos emphasized increased visibility and improved driver awareness in real-world operations. ATA also encouraged FMCSA to work with industry stakeholders to develop recommended practices regarding lamp characteristics such as color, placement, intensity, and operating patterns.

Commenters opposing the exemption or raising concerns included Citizens for Transportation Safety, the Transportation Safety Policy Institute (TSPI), AWM Associates, LLC, and two individuals. Citizens for Transportation Safety stated that the use of amber brake-activated lighting conflicts with established color conventions in which red signals braking and amber signals caution, noting that widespread use of amber lighting in escort vehicles, service vehicles, and construction zones reinforces amber as a non-braking signal. TSPI raised concerns regarding compliance with 49 CFR 393.11 and the incorporation of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, noting that the petition did not explicitly request relief from applicable rear lamp color requirements and may be inconsistent with existing regulatory color standards. Patrick Hunt and AWM Associates, LLC expressed concerns regarding glare, visual discomfort, and distraction, particularly under nighttime or stop-and-go traffic conditions, and the intensity of high-output LED lighting systems. One individual also

warned that high-intensity LED lighting may cause momentary blindness or visual impairment in close-range traffic conditions.

Other commenters, including Mark Sabol and the ATA, provided additional observations regarding implementation and consistency. These commenters suggested that exemptions should be applied consistently across manufacturers and that further development of performance standards or recommended practices—such as brightness, placement, and operating characteristics—may be beneficial to support safe and uniform deployment of pulsating rear lighting technologies.

V. FMCSA Decision

FMCSA has evaluated Truck-Lite's exemption application materials along with the comments received. The Agency has determined that granting a temporary exemption to allow motor carriers to install Truck-Lite and/or ECCO (both owned by Clariance Technologies) auxiliary amber brake-activated pulsating lamps on the rear of CMVs in addition to the steady-burning brake lamps required by the FMCSRs at location or locations specified in Section VI.B., would likely achieve a level of safety equivalent to or greater than the level of safety achieved without the exemption.

Rear-end crashes generally account for approximately 30 percent of all crashes. These types of crashes often result from a failure to respond (or delays in responding) to a stopped or decelerating lead vehicle. Data between 2010 and 2016 show that large trucks are consistently three times more likely than other vehicles to be struck in the rear in two-vehicle fatal crashes.^{1 2}

Research conducted by both FMCSA and NHTSA explored alternative rear signaling systems to address this issue. Specifically, FMCSA conducted research and development on Enhanced Rear Signaling (ERS) systems, which showed the ability of flashing lamps to draw visual attention. However, FMCSA ultimately decided not to pursue formal field operational testing of the prototype system due to concerns about implementation costs and fleets' willingness to invest in the technology. Nonetheless, the preliminary research showed that the ERS system performed

¹ U.S. Department of Transportation, National Highway Traffic Safety Administration (2012), Traffic Safety Facts—2010 Data; Large Trucks, Report No. DOT HS 811 628, Washington, DC (June 2012).

² U.S. Department of Transportation, National Highway Traffic Safety Administration (2018), Traffic Safety Facts—2016 Data; Large Trucks, Report No. DOT HS 812 497, Washington, DC (May 2018).

well at detecting and signaling rear-end crash threats and drawing the gaze of following-vehicle drivers to the forward roadway which, if implemented, could potentially reduce the number and frequency of rear-end crashes into the rear of CMVs.

Separately, NHTSA has performed a series of research studies intended to develop and evaluate rear signaling applications designed to draw drivers' visual attention to the forward roadway.³ The research demonstrated that people rated flashing all lights simultaneously or alternately flashing as attention-getting, even at levels of brightness within the current regulated limits.

In addition, NHTSA has conducted research on the effectiveness of rear turn signal color on the likelihood of being involved in a rear-end crash.⁴ FMVSS No. 108 allows rear turn signals to be either red or amber in color. The study showed that amber signals show a 5.3 percent effectiveness in reducing involvement in two-vehicle crashes where a lead vehicle is struck from the rear in the act of turning left, turning right, merging into traffic, changing lanes, or entering/leaving a parking space. The advantage of amber rear turn signals was shown to be statistically significant.

FMCSA acknowledges the concerns raised by Citizens for Transportation Safety, the Transportation Safety Policy Institute (TSPI), Patrick Hunt, AWM Associates, LLC, and other commenters, regarding the use of amber lighting to convey braking events, potential driver confusion, compliance with 49 CFR 393.11, and the potential for glare or distraction.

FMCSA notes that the auxiliary lamps described in the application are not intended to replace the required rear stop lamps, which remain steady-burning and red in color, but rather to supplement those lamps. While the auxiliary lamps are not required under 49 CFR 393.11, when they are activated by the service brake system, they are subject to the steady-burning requirement under 49 CFR 393.25(e), which applies to both required and additional exterior lamps. As such, an exemption is appropriate when a motor

carrier seeks to use a non-steady-burning lamp that is otherwise regulated under this provision.

FMCSA further notes that the auxiliary lamps operate for a limited duration—pulsating for up to four seconds upon brake application before transitioning to a steady-burning red signal. The Agency finds that, because the required red brake lamps remain the primary braking signal, the use of an auxiliary amber pulsating lamp in addition to those required lamps does not alter the fundamental meaning of the braking signal conveyed to following drivers.

In conclusion, FMCSA is not aware of any evidence indicating that the use of auxiliary brake-activated pulsating lamps—when operated under previously granted exemptions and in compliance with the applicable terms and conditions of those exemptions—has resulted in adverse safety impacts. Considering the available research, prior exemptions involving similar technologies, the supplemental nature of the auxiliary lamps, and the information provided in the application, FMCSA concludes that the installation of Truck-Lite and/or ECCO auxiliary amber brake-activated pulsating lamps on the rear of CMVs in addition to the steady-burning brake lamps required by the FMCSRs is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

VI. Exemption

A. Applicability of Exemption

During the exemption period, motor carriers operating CMVs may install and use Truck-Lite and/or ECCO auxiliary amber brake-activated pulsating lamps in addition to the steady-burning brake lamps required by FMCSRs at locations specified in VI.B.

B. Terms and Conditions

1. This exemption applies only to motor carriers operating CMVs equipped with Truck-Lite and/or ECCO auxiliary amber brake-activated pulsating lamps under the terms and conditions herein.

2. Motor carriers operating under this exemption may use Truck-Lite and/or ECCO auxiliary brake-activated pulsating lamps in the following configurations on CMVs:

- a. Upper Pair: Two auxiliary brake-activated pulsating lamps centered about the trailer's centerline, positioned 6–12 inches from the centerline of the outermost identification (ID) lamps, and collinear with the three-ID-lamp cluster.
- b. Single Lower Lamp: One auxiliary brake-activated pulsating lamp centrally

located on or below the rear sill, collinear with the stop/tail/turn lamps.

c. Upper Pair + Single Lower Lamp: Both the upper pair (as described in (1)) and a single auxiliary brake-activated pulsating lamp (as described in (2)).

d. Lower Pair: Two auxiliary brake-activated pulsating lamps centered about the trailer's centerline, located on or below the rear sill.

e. Upper Pair + Lower Pair: Both the upper pair (as described in (1)) and the lower pair (as described in (4)).

3. The Truck-Lite and/or ECCO auxiliary brake-activated pulsating lamps used under this exemption must:

- a. Be amber in color and function as a Class II strobe (pulsate) for up to four seconds when the brake is applied.
- b. Transition to a steady red for the duration of the brake circuit activation.
- c. Remain off when the brake circuit is inactive.
- d. Be in addition to the steady-burning brake lamps required by the FMCSRs.

4. Truck-Lite is required to provide a list of the USDOT numbers of the motor carriers using Truck-Lite and/or ECCO auxiliary brake-activated pulsating lamps to MCPSV@dot.gov on an annual basis beginning 12 months after the effective date of this notice.

5. Truck-Lite must meet with FMCSA on request to answer questions regarding reporting requirements provided under the exemption.

C. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

VII. Termination

FMCSA does not believe the motor carriers covered by this exemption will experience any deterioration of their safety record. However, the exemption will be revoked if: (1) Truck-Lite, ECCO, or motor carriers using Truck-Lite or ECCO pulsating lamps under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with

³ U.S. Department of Transportation, National Highway Traffic Safety Administration (2009), Traffic Safety Facts—Vehicle Safety Research Notes, Assessing the Attention-Gettingness of Brake Signals: Evaluation of Optimized Candidate Enhanced Braking Signals, Report No. DOT HS 811 129, Washington, DC (May 2009).

⁴ U.S. Department of Transportation, National Highway Traffic Safety Administration (2009), Evaluation of Enhanced Brake Lights Using Surrogate Safety Metrics, Report No. DOT HS 811 127, Washington, DC (April 2009).

the goals and objectives of Title 49, chapter 313 or section 31136.

Derek D. Barrs,
Administrator.

[FR Doc. 2026–11059 Filed 6–2–26; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–0892]

Request for Comments on the Renewal of a Previously Approved Information Collection: Mariner Pretest Survey

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

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0555 titled “Mariner Survey Pretest” is being renamed “Mariner Survey” to reflect the transition from a pretest survey to a full voluntary survey of merchant mariners. Collected information will be used to determine the number of qualified mariners who are available and willing to serve during a period of national need. Since the implementation of this survey, the total respondents, responses, and burden hours increased from 690, 690, and 247 hours to 5,162, 5,162, and 1,721 hours respectively. Additionally, there were minor changes to clarify some of the survey questions, while the Cognitive Interview instrument was eliminated. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before August 3, 2026.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2026–0892 through one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Search using the above DOT docket number and follow the online instructions for submitting comments.

- **Mail or Hand Delivery:** Docket Management Facility, 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.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to www.regulations.gov including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is reasonable for the Department’s performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be lessened without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB’s clearance of this information collection.

FOR FURTHER INFORMATION CONTACT:

Kevin Lau, Office of Workforce Development & Maritime Education, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: kevin.lau@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Mariner Survey.

OMB Control Number: 2133–0555.

Type of Request: Revision of a previously approved collection.

Abstract: The Mariner Survey is a voluntary survey of appropriately credentialed U.S. merchant mariners and will be used to estimate the number of qualified merchant mariners who are willing to serve on short notice during a period of war, armed conflict, national emergency, or maritime mobilization need (national need). This exercise will be used to assess the maritime workforce’s capacity to support both sealift operations and maritime commerce during surge operations. Per 46 United States Code (U.S.C.) 50102(a), this survey will be conducted biennially, to adequately monitor changes in the mariner workforce’s availability and willingness to sail.

Respondents: Sample of credentialed merchant mariners.

Affected Public: Individuals and households.

Estimated Number of Respondents: 5,162.

Estimated Number of Responses: 5,162.

Estimated Hours per Response: 20 minutes (.33333 hours).

Estimated Total Annual Burden Hours: 1,721.

Frequency of Response: Biennially.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–11099 Filed 6–2–26; 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 May 29, 2026. 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 Actions

On May 29, 2026, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. AKHTARIAN, Sayyed Payam (a.k.a. AKHTARIAN, Payam), Tehran, Iran; DOB 28 Aug 1984; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0068490585 (Iran) (individual) [SDGT] [IFSR] (Linked To: SORENA HUSHMAND SAMANEH COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," (E.O. 13224), 66 FR 49079, 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 being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, SORENA HUSHMAND SAMANEH COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. BAGHERI, Hoda Baradaran (a.k.a. BAGHERI, Hoda), Tehran, Iran; DOB 15 Sep 1984; nationality Iran; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0074993305 (Iran); Birth Certificate Number 7616 (Iran) (individual) [SDGT] [IFSR] (Linked To: SORENA HUSHMAND SAMANEH COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, SORENA HUSHMAND SAMANEH COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. DAREHSHIRI, Mohammadali Mansour (a.k.a. DAREH SHIRI, Mohammadali Mohammad; a.k.a. DAREHSHIRI, Mansour; a.k.a. DAREHSHIRI, Mohammad Ali; a.k.a. DARREH SHIRI, Mohammed Ali), Tehran, Iran; United Arab Emirates; DOB 27 Jul 1964; POB Yazd, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport N61034949 (Iran) expires 06 Dec 2027; National ID No. 4430983704 (Iran); Birth Certificate Number 2377 (Iran) (individual) [SDGT] [IFSR] (Linked To: SEPEHR, Ali Majd).

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, ALI MAJD SEPEHR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. REZAEI, Farzaneh (a.k.a. REZAI, Farzaneh), Tehran, Iran; DOB 07 Oct 1975; nationality Iran; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0072615125 (Iran); Birth Certificate Number 4712 (Iran) (individual) [SDGT] [IFSR] (Linked To: SORENA HUSHMAND SAMANEH COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, SORENA HUSHMAND SAMANEH COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. SARMADI, Roudabeh (a.k.a. SARMADI, Rudabeh), Tehran, Iran; DOB 11 Nov 1983; POB Tehran, Iran; nationality Iran; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0070144011 (Iran); Birth Certificate Number 13019 (Iran) (individual) [SDGT] [IFSR] (Linked To: SORENA HUSHMAND SAMANEH COMPANY).

Designated pursuant to section 1(a)(iii)(E)(1) of E.O. 13224, as amended, for being a leader or official of SORENA HUSHMAND SAMANEH COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. SEPEHR, Ali Majd (a.k.a. BITAZAR, Ali; a.k.a. BITAZER, Ali), Tehran, Iran; DOB 22 Dec 1980; POB Tehran, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0071722221 (Iran) (individual) [SDGT] [IFSR] (Linked To:

MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

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, MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. ZAHEDI, Saeid, Rome, Italy; Iran; DOB 03 Oct 1987; POB Tehran, Iran; nationality Iran; alt. nationality Italy; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport YB2971531 (Italy) expires 08 Apr 2028; National ID No. 0078347726 (Iran); alt. National ID No. ZHSDA87R03Z2240 (Italy) (individual) [SDGT] [IFSR] (Linked To: SEPEHR, Ali Majd).

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, ALI MAJD SEPEHR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. ZANDIAN, Manoochehr (a.k.a. ZANDIAN, Manoochehr Shahryar), Tehran, Iran; DOB 02 May 1960; POB Meybod, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 4489859856 (Iran) (individual) [SDGT] [IFSR] (Linked To: SORENA HUSHMAND SAMANEH COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, SORENA HUSHMAND SAMANEH COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AL KAWTHER NEON LLC (Arabic: الكوثر للنيون ش.ذ.م.م.) (a.k.a. ALKAWTHER NEON CO), P.O. Box 80123, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 Jun 2003; Commercial Registry Number 996952 (United Arab Emirates); Chamber of Commerce Number 99850 (United Arab Emirates); Registration Number 546643 (United Arab Emirates); Economic Register Number (CBLS) 10814414 (United Arab Emirates) [SDGT] [IFSR] (Linked To: SEPEHR, Ali Majd).

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, ALI MAJD SEPEHR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. GREEN LIGHT COMPUTER CO LLC (Arabic: شركة الضوء الاخضر للكمبيوتر ذ.م.م.) (a.k.a. GREEN LIGHT COMPUTER CO), Deira Al Khabeesi, Dubai, United Arab Emirates; P.O. Box 47167, Dubai, United Arab Emirates; Website www.greenlightuae.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 Aug 1999; License 513937 (United Arab Emirates); Economic Register Number (CBLS) 10801439 (United Arab Emirates) [SDGT] [IFSR] (Linked To: DAREHSHIRI, Mohammadali Mansour).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, MOHAMMADALI MANSOUR DAREHSHIRI, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. SAIRAN INFORMATION EXCHANGE SPACE SECURITY INDUSTRIES COMPANY (a.k.a. SAIRAN INFORMATION EXCHANGE SPACE SECURITY INDUSTRY; a.k.a. "SAAFTA"), Shahid Teymouri Alley, Shahid Langari Street, Nobonyad Square, Pasdaran Street, Tehran 1957975713, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 05 Apr 2015; National ID No. 14004828226 (Iran); Identification Number 411481176816 (Iran); Registration Number 470437 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. SORENA HUSHMAND SAMANEH COMPANY (Arabic: شرکت سامانه هوشمند سورنا) (a.k.a. SAMANEH HOUSHMAND SORENA; a.k.a. SORENA SMART SYSTEM CO LTD; a.k.a. SORENA TECHNOLOGY), Unit 9, No. 7, Alley 12, South Ghandi Street, Vanak Square, Tehran, Iran;

Website sorena.ir; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 10103647730 (Iran); Registration Number 323911 (Iran) [SDGT] [IFSR] (Linked To: SEPEHR, Ali Majd).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, ALI MAJD SEPEHR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

(Authority: E.O. 13224, as amended)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026-11042 Filed 6-2-26; 8:45 am]

BILLING CODE 4810-AL-P



FEDERAL REGISTER

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Wednesday,

No. 106

June 3, 2026

Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, 230, et al.

Rescission of Climate-Related Disclosure Rules; Proposed Rule

**SECURITIES AND EXCHANGE
COMMISSION****17 CFR Parts 210, 229, 230, 232, 239,
and 249****[Release Nos. 33–11421; 34–105572; File
No. S7–2026–19]****RIN 3235–AN76****Rescission of Climate-Related
Disclosure Rules****AGENCY:** Securities and Exchange
Commission.**ACTION:** Proposed withdrawal of final
rules.**SUMMARY:** The Securities and Exchange
Commission (“Commission”) proposes
to rescind amendments to its rules
under the Securities Act of 1933
(“Securities Act”) and Securities
Exchange Act of 1934 (“Exchange Act”) that require registrants to provide
certain climate-related information in
their registration statements and annual
reports.**DATES:** Comments should be received on
or before August 3, 2026.**ADDRESSES:** Comments may be
submitted by any of the following
methods:*Electronic Comments*

- Use the Commission’s internet
comment form ([https://www.sec.gov/
comments/s7-2026-19/rescission-
climate-related-disclosure-rules](https://www.sec.gov/comments/s7-2026-19/rescission-climate-related-disclosure-rules)).
- Send an email to [rule-comments@
sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–
2026–19 on the subject line.

Paper Comments

- Send paper comments to Vanessa
A. Countryman, Secretary, Securities
and Exchange Commission, 100 F Street
NE, Washington, DC 20549–1090.

All submissions should refer to File
Number S7–2026–19. This file number
should be included on the subject line
if email is used. To help the
Commission process and review your
comments more efficiently, please use
only one method of submission. The
Commission will post all comments on
the Commission’s website ([https://
www.sec.gov/rules-regulations/public-
comments/s7-2026-19](https://www.sec.gov/rules-regulations/public-comments/s7-2026-19)). Do not include
personally identifiable information in
submissions; you should submit only
information that you wish to make
available publicly. The Commission
may redact in part or withhold entirely
from publication submitted material

that is obscene or subject to copyright
protection.

Studies, memoranda, or other
substantive items may be added by the
Commission or staff to the comment file
during this rulemaking. A notification of
the inclusion in the comment file of any
such materials will be made available
on the Commission’s website. To ensure
direct electronic receipt of such
notifications, sign up through the “Stay
Connected” option at www.sec.gov to
receive notifications by email.

A summary of the proposal of not
more than 100 words is posted on the
Commission’s website ([https://
www.sec.gov/rules-regulations/2026/05/
s7-2026-19](https://www.sec.gov/rules-regulations/2026/05/s7-2026-19)).

FOR FURTHER INFORMATION CONTACT:

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Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

The
Commission is proposing to withdraw
certain previously adopted but not yet
effective amendments to the following
rules and forms:

Commission Reference		CFR Citation (17 CFR)
Regulation S-X	Article 8-01	§ 210.8-01
	Article 14-01	§ 210.14-01
	Article 14-02	§ 210.14-02
Regulation S-K	Items 1500 through 1508	§§ 229.1500 through 229.1508
	Item 601	§ 229.601
Regulation S-T	Item 405	§ 232.405
Securities Act ¹	Rule 436	§ 230.436
	Form S-1	§ 239.11
	Form S-3	§ 239.13
	Form S-11	§ 239.18
	Form S-4	§ 239.25
	Form F-3	§ 239.33
	Form F-4	§ 239.34
Exchange Act ²	Form 10	§ 249.210
	Form 20-F	§ 249.220f
	Form 10-Q	§ 249.308a
	Form 10-K	§ 249.310

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I. Overview

We propose to rescind the climate-related disclosure rules adopted by the Commission in 2024 ("Final Rules").³ Congress gave the Commission certain specific powers within the Federal securities laws. Among those powers, the Commission's governing statutes authorize the agency to except from or add to the mandatory items of disclosure specified in the Securities Act and the Exchange Act.⁴ This authority, however, is limited by the text and context of these statutes. Furthermore, even when acting pursuant to an explicit grant of authority, it is incumbent on the Commission to implement a disclosure regime that elicits material information

³ See *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33-11275 (Mar. 6, 2024) [89 FR 21668 (Mar. 28, 2024)] ("Adopting Release"). Terms not defined in this release are used as defined in the Adopting Release. Because the Final Rules were never codified in the Code of Federal Regulations ("CFR") as a consequence of being stayed, *see infra* note 39, the proposed rescission of the Final Rules would not require any amendments to the CFR. References herein to the CFR citations of the Final Rules reflect what those citations would have been upon effectiveness, as set forth in the Adopting Release.

⁴ See, e.g., 15 U.S.C. 77g; 15 U.S.C. 78l.

¹ 15 U.S.C. 77a *et seq.*

² 15 U.S.C. 78a *et seq.*

for investors while being mindful of the costs imposed on registrants to collect and disclose that information. When the Commission loses sight of these considerations, it risks not only imposing undue costs on registrants⁵ and impeding capital formation, but also harming the very investors it seeks to protect.

The Final Rules were a dramatic overreach of the Commission's statutory authority and, independently, unsound as a matter of policy. Based on an incorrect view of the scope of its authority, the Commission determined that it was appropriate to prescribe dozens of pages of highly specific disclosure rules solely about climate-related matters⁶ and apply the bulk of those rules to virtually all public companies, regardless of size, industry, or specific circumstances.

The Final Rules also discounted the role of market forces in the flow of information between registrants and investors. Disclosures mandated by the Commission are only some of the information registrants provide to the marketplace. Investors and analysts often demand additional information about a wide range of topics depending on their particular investment strategies or non-investment interests. Registrants in turn may voluntarily provide such information depending on the nature of their business and the investor base they wish to attract. We expect this market-driven flow of information will continue following a rescission of the Final Rules, but it is not the Commission's role to require disclosure of particular information because it is useful for any one investment strategy or desired by some political interests for the purpose of influencing business practices. Rather, in exercising its authority to *mandate* disclosure within the statutory limits imposed by Congress, the Commission should seek to adopt rules that elicit information pursuant to the standard of materiality established by the Supreme Court: information that a reasonable investor would consider important in buying or selling securities.⁷

Accordingly, as discussed in more detail in the sections that follow, we propose to rescind the Final Rules in their entirety because they exceed the

statutory limits on the Commission's disclosure authority. Furthermore, even if the Commission had authority to adopt the Final Rules, several independent policy reasons support their rescission, including that:

- The Final Rules are unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure;
- The Final Rules stray well beyond the policy concerns of the Federal securities laws;
- The Final Rules impose substantial costs that are not justified by the informational benefits they may provide to some investors; and
- The Final Rules are at odds with the Commission's policy objectives of facilitating capital formation and promoting public company status.

II. Adoption of the Final Rules and Subsequent Litigation

On March 21, 2022, the Commission proposed rules that would require registrants to include extensive new climate-related disclosures in their registration statements and periodic reports, including detailed information about the impact and management of climate-related risks, GHG emissions, scenario analysis, internal carbon prices, and certain climate-related financial statement effects.⁸ The Proposing Release was highly contentious,⁹ and in response, the Commission received a large number of comments from a variety of market participants, environmental lobbying groups, and members of the public expressing starkly divergent views about the proposed rules.¹⁰

Some commenters supported the proposed rules, stating that climate-related risks can have material impacts on a company's financial position or performance.¹¹ Commenters in support of the proposed rules indicated, among other things, that adoption of

mandatory, climate-related disclosure rules would improve the timeliness, quality, and reliability of climate-related information, which would facilitate investors' cross-company comparisons of climate-related risks and lead to more accurate securities valuations.¹²

Many other commenters opposed the proposed rules and requested either that the Commission not adopt the proposal or make significant revisions in the Final Rules.¹³ Some commenters asserted that the Commission lacked statutory authority to adopt the proposed rules.¹⁴ Others stated that existing voluntary reporting practices were sufficient to serve the needs of investors and markets such that the proposed rules were unnecessary.¹⁵ Opposing commenters further stated that the proposed rules were overly prescriptive, that they were not bound in every instance by a materiality qualifier, that their adoption would result in the disclosure of a large volume of immaterial information that would be confusing to investors, and that mandating such disclosure requirements would impose a significant burden on registrants while resulting in few additional benefits for investors.¹⁶

On March 6, 2024, the Commission approved the Final Rules by a 3–2 vote. While the Final Rules included changes from the proposal in response to commenter concerns, the adopted regulations continued to include numerous, highly prescriptive disclosure requirements. To house the extensive new disclosure requirements, the Final Rules created a new subpart 1500 of Regulation S–K¹⁷ and a new Article 14 of Regulation S–X.¹⁸ Among other things, the Final Rules require a registrant to consider and possibly disclose the following detailed items:

- If a registrant is a large accelerated filer (“LAF”), or an accelerated filer (“AF”) that is not otherwise exempted, and its Scope 1 emissions and/or its Scope 2 emissions metrics¹⁹ are material, certain disclosure about those emissions, including:
 - The volume of the emissions disclosed separately and each expressed

⁵ For purposes of this release, we use the terms “registrants,” “public companies,” “companies,” and “issuers” interchangeably.

⁶ As discussed below, the Final Rules require disclosure about, among other things, greenhouse gas (“GHG”) emissions, the management of climate-related risks, and the financial statement effects of severe weather events. See *infra* section II. We refer to these and related disclosure topics throughout this release as “climate-related matters.”

⁷ See *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

⁸ See *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33–11042 (Mar. 21, 2022) [87 FR 21334 (Apr. 11, 2022)] (“Proposing Release”); see also *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33–11061 (May 9, 2022) [87 FR 29059 (May 12, 2022)] (extension of comment period for Proposing Release); *Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments*, Release No. 33–11117 (Oct. 7, 2022) [87 FR 63016 (Oct. 18, 2022)] (reopening of comment period for Proposing Release).

⁹ See, e.g., Richard Vanderford, *SEC's Gensler Bracing for Lawsuits over Climate Rule*, Wall Street Journal (Feb. 13, 2024), available at <https://www.wsj.com/articles/secs-gensler-bracing-for-lawsuits-over-climate-rule-60165fec>.

¹⁰ Adopting Release at 21677–79.

¹¹ *Id.* at 21677.

¹² *Id.*

¹³ *Id.* at 21678.

¹⁴ *Id.* at 21683, n.172.

¹⁵ *Id.* at 21678.

¹⁶ *Id.*

¹⁷ 17 CFR 229.1500 through 17 CFR 229.1507.

¹⁸ 17 CFR 210.14–01 through 17 CFR 210.14–02.

¹⁹ Under the GHG Protocol, Scope 1 emissions are direct GHG emissions that occur from sources owned or controlled by the company. Scope 2 emissions are those emissions primarily resulting from the generation of electricity purchased and consumed by the company. See Proposing Release, section I.D.2.

in the aggregate, in terms of CO₂e²⁰ and, if any constituent gas of the disclosed emissions is individually material, such constituent gas disaggregated from other gases;

- Scope 1 emissions and/or Scope 2 emissions in gross terms by excluding the impact of any purchased or generated offsets;
- The methodology, significant inputs, and significant assumptions used to calculate the GHG emissions;
- The organizational boundaries used when calculating the registrant's disclosed GHG emissions, including the method used to determine those boundaries;
- The operational boundaries used, including the approach to categorization of emissions and emissions sources; and
- The protocol or standard used to report the GHG emissions, including the calculation approach, the type and source of any emission factors used, and any calculation tools used to calculate the GHG emissions;²¹
- If a registrant's use of internal carbon pricing is material, the price per metric ton of CO₂e and the total price, including how the total price is estimated to change over certain time periods;²²
- Any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition;²³
- Any oversight by the board of directors of climate-related risks, regardless of the materiality of those risks, and any role by management in assessing and managing the registrant's material climate-related risks;²⁴
- Any processes the registrant has for identifying, assessing, and managing material climate-related risks and, if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes;²⁵ and
- If a registrant has set a climate-related target or goal that has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition, certain disclosures about such target or goal, including

material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal.²⁶

- With respect to financial statement disclosures:
 - The capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds;²⁷
 - The capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates ("RECs") if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals;²⁸ and
 - If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted.²⁹

In addition, registrants that are required to disclose Scopes 1 and/or 2 emissions must file an attestation report of those emissions subject to phased-in compliance dates.³⁰ Further, the Final Rules require a registrant that is not required to disclose its GHG emissions or to include a GHG emissions attestation report pursuant to the Final Rules to disclose certain information if the registrant voluntarily discloses its GHG emissions in a Commission filing and voluntarily subjects those disclosures to third-party assurance.³¹

The Final Rules exempt certain registrants from disclosure in limited

circumstances.³² Outside these limited circumstances, the Final Rules require almost every registrant to comply with the vast majority of the new disclosure requirements after a transition period.³³ As the Adopting Release noted, nearly every registrant will be required to start complying with the Final Rules by the fiscal year beginning in 2027.³⁴

Within 60 days of the Commission's adoption of the Final Rules on March 6, 2024, various parties petitioned for judicial review in multiple Federal courts of appeals.³⁵ On March 19, 2024, the Commission filed a Notice of Multicircuit Petitions for Review with the Judicial Panel on Multidistrict Litigation ("JPML"), and on March 21, 2024, the JPML issued an order consolidating the petitions for review in the U.S. Court of Appeals for the Eighth Circuit ("Eighth Circuit").³⁶ On April 4, 2024, the Commission, citing its authority pursuant to the Exchange Act³⁷ and the Administrative Procedure Act,³⁸ entered a stay of the Final Rules and ordered that "the Final Rules [would be] stayed pending the completion of judicial review of the consolidated Eighth Circuit petitions."³⁹

On March 27, 2025, the Commission voted to end its defense of the rules. The Commission staff sent a letter to the court stating that the Commission withdraws its defense of the rules and that Commission counsel are no longer authorized to advance the arguments in the brief the Commission had filed. Thereafter, on September 12, 2025, the Eighth Circuit issued an Order holding the consolidated petitions for review in abeyance "until such time as the . . . Commission reconsiders the challenged Final Rules by notice-and-comment

³² For example, the Commission exempted smaller reporting companies (each an "SRC") and emerging growth companies (each an "EGC") from the requirement to disclose GHG emissions data, and the Commission completely exempted from the Final Rules private companies that are parties to business combination transactions involving a securities offering registered on Form S-4 or F-4. See Adopting Release at 21733, 21744.

³³ See Adopting Release at 21828–29.

³⁴ *Id.*

³⁵ See *Iowa v. SEC*, No. 24–1522 (8th Cir.), and consolidated cases.

³⁶ Consolidation Order, *In re Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors*, MCP No. 180 (J.P.M.L. Mar. 21, 2024).

³⁷ 15 U.S.C. 78y(c)(2).

³⁸ 5 U.S.C. 705.

³⁹ *The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date*, Release No. 33–11280 (Apr. 4, 2024) [89 FR 25804 (Apr. 12, 2024)]; see also Sec. & Exch. Comm'n, *In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors (Order Issuing Stay)*, Release No. 33–11280 (Apr. 4, 2024) (order staying Final Rules).

²⁰ 17 CFR 229.1500. "Carbon dioxide equivalent" or "CO₂e" means the common unit of measurement to indicate the global warming potential ("GWP") of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide. See *id.*

²¹ 17 CFR 229.1505.

²² 17 CFR 229.1502(g).

²³ 17 CFR 229.1502(a).

²⁴ 17 CFR 229.1501(a).

²⁵ 17 CFR 229.1503.

²⁶ 17 CFR 229.1504.

²⁷ 17 CFR 210.14–02(c) and 210.14–02(d).

²⁸ 17 CFR 210.14–02(e).

²⁹ 17 CFR 210.14–02(h).

³⁰ 17 CFR 229.1506. Pursuant to the Final Rules, an AF must file an attestation report at the limited assurance level beginning the third fiscal year after the compliance date for disclosure of GHG emissions while an LAF must file an attestation report at the limited assurance level beginning the third fiscal year after the compliance date for disclosure of GHG emissions, and then file an attestation report at the reasonable assurance level beginning the seventh fiscal year after the compliance date for disclosure of GHG emissions. *Id.*

³¹ *Id.*

rulemaking or renews its defense of the Final Rules.”⁴⁰ The Eighth Circuit explained that it is the Commission’s “responsibility to determine whether its Final Rules will be rescinded, repealed, modified, or defended in litigation.”⁴¹ As a result of the current procedural posture, the Final Rules remain stayed. The court has not made any decision on the merits of any arguments presented by any petition for review of the Final Rules.

III. Discussion of Proposed Rescission

A. Overview of Basis for Rescission: Lack of Authority and Reevaluation of Policy Grounds

As noted above, we are proposing to rescind the Final Rules in their entirety because they exceed the scope of the Commission’s statutory authority. In addition, even if a court were to find that the Commission had authority to adopt the Final Rules, we have independent, compelling policy reasons to rescind the rules in their entirety. The Final Rules are unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure that best serves the interests of registrants and investors; stray well beyond the policy concerns of the Federal securities laws; impose substantial costs on public companies and their shareholders that are not justified by the informational benefits they may provide to some investors; and are at odds with the Commission’s policy objectives of facilitating capital formation and promoting public company status.

B. The Final Rules Exceed the Commission’s Statutory Authority

A fundamental principle of constitutional and administrative law is that an administrative agency must act within its statutory authority.⁴² An agency acts unlawfully when it

exercises power beyond its authority.⁴³ Agencies must respond to their own unlawful acts; as the Supreme Court recently put it, illegal agency action “presumably requires remedial action of some sort.”⁴⁴ The proper remedy for the Commission’s lack of statutory authority to adopt the Final Rules is rescission.

An agency’s rulemaking power is determined by examining the text and context of the relevant statutory provisions. Statutory provisions are not read in isolation; courts look to their place in the overall statutory scheme.⁴⁵ Courts also apply the major questions doctrine to determine the lawfulness of agency action.⁴⁶

⁴³ See *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“Agencies have only those powers given to them by Congress”); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327–328 (2014) (stating that to avoid “a severe blow to the Constitution’s separation of powers,” an agency must act within the bounds established by Congress and may not rewrite statutory terms “to suit its own sense of how [a] statute should operate”); *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (“No matter how it is framed, the question a court faces when confronted with an agency’s interpretation of a statute it administers is always, simply, whether the agency has stayed within the bounds of its statutory authority.”) (italics in original); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (“In determining whether a challenged regulation is valid, a reviewing court must first determine if the regulation is consistent with the language of the statute.”); *Stark v. Wickard*, 321 U.S. 288, 309 (1944) (“When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted.”); *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 398 (D.C. Cir. 2004) (stating that a Federal agency is a creature of statute, has no constitutional or common law existence or authority, and has “only those authorities conferred upon it by Congress”) (italics in original) (citation omitted).

⁴⁴ *Dep’t of Homeland Sec. v. Regents of Univ. of Calif.*, 591 U.S. 1, 22 (2020); see also *id.* at 46, 54 (Thomas, J., concurring in the judgment in part and dissenting in part) (reasoning for three justices that an agency should rescind an unlawful action rather than “continue acting unlawfully [by] carr[ying] the program forward”). The majority held that the Department of Homeland Security’s rescission of a program was arbitrary and capricious in violation of the Administrative Procedure Act because the government did not adequately consider possible alternatives or reliance interests. *Id.* at 24–33. This release considers those issues.

⁴⁵ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000); *West Virginia v. EPA*, 597 U.S. at 721; *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109 (2022); *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758 (2021) (on application to vacate stay); *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67 (2021); *Util. Air Regul. Grp. v. EPA*, 573 U.S. at 318–21; *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015).

⁴⁶ See *Learning Res., Inc. v. Trump*, 146 S.Ct. 628, 638–639 (2026); *Biden v. Nebraska*, 600 U.S. 477, 502–07 (2023); *West Virginia v. EPA*, 597 U.S. at 721–24 (need for clear congressional authorization for assertions of extravagant statutory power over the national economy); see also *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 705–06 (2025) (Kavanaugh, J., concurring) (“[W]hen interpreting a statute and determining the limits of the statutory text, courts presume that Congress . . . has not delegated

In the Federal securities laws, Congress required specific disclosures for registrants conducting public offerings in the United States or registering securities for trading on U.S. exchanges. When enacting the Securities Act and the Exchange Act, Congress explicitly called for disclosures of items central to an understanding of a registrant’s business, operation and performance, financial condition, directors, management and control, capital structure, the rights of security holders, and the terms of a registered offering.⁴⁷ These disclosures provide investors with operational and financial information particular to the circumstances of the registrant.

Congress also granted the Commission authority to adopt rules eliminating, substituting, or adding certain disclosures. When adopting such a rule, the Commission must follow the directives and guardrails in the text and context of the governing statutes, as discussed below.

When the Commission exercises its legal authority to adopt a disclosure rule under the statutes discussed below, in certain instances it must also determine whether the action is necessary or appropriate in the public interest.⁴⁸ When making such a public interest determination, the Commission must “consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”⁴⁹ These considerations are constraints on the exercise of authority, not sources of authority.

Courts have also recognized that federalism limits the Commission’s rulemaking authority in areas of corporate governance regulated by State law.⁵⁰ Congress has traditionally left

authority to the President to issue major rules—that is, rules of great political and economic significance—unless Congress clearly says as much. Courts presume that Congress intends to make major policy decisions itself, not leave those decisions to agencies . . . Congress does not usually ‘hide elephants in mouseholes’ when granting authority to the President.” (citations omitted).

⁴⁷ See 15 U.S.C. 77aa; 15 U.S.C. 78l(b)(1). In this release, we refer to the disclosure items that Congress enumerated in the foregoing provisions collectively as “business or financial characteristics.”

⁴⁸ See, e.g., 15 U.S.C. 77g(a)(1); 15 U.S.C. 78l(b)(1).

⁴⁹ 15 U.S.C. 77b(b); 15 U.S.C. 78c(f); see also 15 U.S.C. 78w(a)(2) (requiring the Commission to consider the effects on competition of any rules that the Commission adopts under the Exchange Act and prohibiting the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act).

⁵⁰ See *Bus. Roundtable v. SEC*, 905 F.2d 406, 412 (D.C. Cir. 1990) (“As the Supreme Court has said,

⁴⁰ Order, *Iowa v. SEC*, No. 24–1522 (8th Cir. Sept. 12, 2025). The Eighth Circuit’s decision to hold the consolidated petitions for review in abeyance was made after (1) the Commission’s filing with the Eighth Circuit dated Mar. 27, 2025, notifying the court and the parties in the litigation that the Commission had “determined that it wishe[d] to withdraw its defense of the [Final] Rules” and (2) a status report that the Commission filed with the Eighth Circuit on July 23, 2025, wherein the Commission notified the Eighth Circuit that it did not intend to review or reconsider the Final Rules at that time and requested that the court proceed to decide the petitions for review.

⁴¹ *Id.*

⁴² See, e.g., *Bd. of Governors of Fed. Rserv. Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 373 n.6 (1986) (holding that an administrative agency, in this case the Federal Reserve Board, only has the power “to police within the boundaries of the [relevant authorizing statute]” and not “to expand its jurisdiction beyond the boundaries established by Congress”).

corporate governance to the States to regulate, and it has spoken clearly on the rare occasions when it has shifted that balance.⁵¹

As discussed below, the Final Rules do not satisfy the statutory criteria for adopting additional disclosure provisions under the Securities Act or Exchange Act. The disclosures compelled by the Final Rules are not within the scope of the categories of disclosures Congress required and do not comport with the directives Congress set for excepting from, substituting, or adding to those disclosures. They also improperly intrude on State corporate law without a statutory directive. Accordingly, we propose to rescind the Final Rules in their entirety.

1. Scope of the Commission's Disclosure Authority

We first examine the text and context of Congress's directions on mandatory disclosures and then consider the Commission's ability to make changes to them. The main statutory provisions discussed in the Adopting Release were sections 7(a)(1)⁵² and 19(a)⁵³ of the Securities Act and sections 12,⁵⁴ 13⁵⁵ and 23(a)(1)⁵⁶ of the Exchange Act.⁵⁷

a. Text of the Disclosure Rulemaking Statutes in the Securities Act and Exchange Act

Section 7(a)(1) of the Securities Act establishes that Schedule A⁵⁸ is the base disclosure for a registration statement and also permits the Commission to except from or add to the disclosure requirements enumerated in Schedule A. Section 7(a)(1) provides

‘[c]orporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation.’” (citing *Santa Fe Indus. v. Green*, 430 U.S. 462, 479 (1977)) (emphasis in original)); see also *id.* at 408 (“[W]e find that the Exchange Act cannot be understood to include regulation of an issue that is so far beyond matters of disclosure . . . and that is concededly a part of corporate governance traditionally left to the states.”).

⁵¹ See *infra* note 126.

⁵² 15 U.S.C. 77g(a)(1) (“section 7(a)(1)”).

⁵³ 15 U.S.C. 77s(a) (“section 19(a)”).

⁵⁴ 15 U.S.C. 78l (“section 12”).

⁵⁵ 15 U.S.C. 78m (“section 13”).

⁵⁶ 15 U.S.C. 78w(a)(1) (“section 23(a)(1)”).

⁵⁷ The Adopting Release also cites sections 10 and 28 of the Securities Act [15 U.S.C. 77j] and 15 U.S.C. 77z–3], and sections 3(b), 15, and 36 of the Exchange Act [15 U.S.C. 78c, 15 U.S.C. 78o, and 15 U.S.C. 78mm] as sources of statutory authority. See, e.g., Adopting Release at 21912. For the same reasons as discussed herein with respect to the main statutory provisions, the Commission does not view any of these additional provisions as providing authority for the Final Rules.

⁵⁸ 15 U.S.C. 77aa (“Schedule A”).

that a registration statement for a public offering “shall contain the information” and documents “specified in Schedule A” of the Securities Act.⁵⁹ Schedule A contains 32 disclosure items, such as the business of the company, its capital structure, use of proceeds from the sale of securities, director and officer compensation, material contracts, the terms of the offering and detailed balance sheet and profit or loss statements.

Section 7(a)(1) gives the Commission the authority to except from or add to Schedule A’s required disclosures in certain circumstances. The Commission may by rule provide that a class of issuers does not need to include information listed in Schedule A if the Commission finds that the information is not applicable to that class “and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement.” Section 7(a)(1) concludes with a provision authorizing the Commission to add disclosure requirements to Schedule A: “Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.”⁶⁰

Section 12 of the Exchange Act similarly requires certain categories of disclosures while allowing the Commission to prescribe the level of detail and to alter the requirements under specified conditions. Section 12 stipulates the information to be filed and made public by a company registering a class of securities on a national securities exchange or that is required to register a class of equity securities under the Exchange Act. Section 12(b)(1) provides that a registration statement must contain 12 enumerated categories of information, such as the financial structure and nature of the business, the terms of classes of securities, the financial interests of directors and officers in the company, certain material contracts, and certain financial statements.⁶¹ Within those 12 categories, the Commission may require a registration statement to include “[s]uch

⁵⁹ Section 7(a)(1) states that a registration statement “shall contain” the information in Schedule A, not that the Commission is “authorized” to require it, as the Adopting Release claimed. *Contra* Adopting Release at 21683.

⁶⁰ 15 U.S.C. 77g(a)(1). Section 19(a) of the Securities Act similarly empowers the Commission to “prescribe . . . the items or details to be shown” in a registrant’s “balance sheet and earning statement.” 15 U.S.C. 77s(a).

⁶¹ 15 U.S.C. 78l(b)(1) (“section 12(b)(1)”).

information, in such detail,” as to the issuer and any control persons “as necessary or appropriate in the public interest or for the protection of investors”⁶²

Section 12(c) gives the Commission the authority to determine that an item listed in section 12(b) is not applicable to a class of issuers. If it does, “the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.”⁶³ Unlike section 7(a)(1) of the Securities Act, section 12 of the Exchange Act does not otherwise permit the Commission to add to the list of disclosure items in section 12(b).

Section 13(a) of the Exchange Act provides the Commission with authority to prescribe periodic disclosure rules for issuers with securities registered under section 12.⁶⁴ The Commission shall require such an issuer “to keep reasonably current the information and documents required to be included in or filed with” an application or registration statement⁶⁵ and may require the issuer to file annual and quarterly reports.⁶⁶ Any rules promulgated under section 13 must be “necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.”⁶⁷ As with section 12(c), section 13(c) instructs that if the Commission concludes “any report required under subsection (a) in inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable”⁶⁸

⁶² *Id.*

⁶³ 15 U.S.C. 78l(c) (“section 12(c)”) (“If in the judgment of the Commission any information required under subsection (b) . . . is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.”).

⁶⁴ 15 U.S.C. 78m(a) (“section 13(a)”). The Commission may require an issuer meeting the terms of section 15(d)(1) of the Exchange Act, 15 U.S.C. 78o(d)(1), to file information and documents required pursuant to section 13 in respect of a security registered pursuant to section 12.

⁶⁵ 15 U.S.C. 78m(a)(1).

⁶⁶ See 15 U.S.C. 78m(a)(2).

⁶⁷ 15 U.S.C. 78m(a). 15 U.S.C. 78m(b)(1) provides that rules “in regard to reports” may prescribe the form of the reports and certain accounting items, such as the details for a balance sheet and valuation methods for, among other things, assets, liabilities, and depreciation. Section 19(a) of the Securities Act similarly provides the Commission with authority to prescribe disclosure of the same list of accounting items and details.

⁶⁸ 15 U.S.C. 78m(c). Section 23(a)(1) of the Exchange Act—the other main provision of the Exchange Act cited in the Adopting Release—empowers the Commission to “make such rules and

These statutory provisions establish the Commission's power to compel disclosures in public offerings and by companies registering securities for public trading. Congress restricted the information an issuer or reporting company must disclose to items central to an understanding of the company's business or financial characteristics. These categories of information are fundamental to valuing the risks and returns of an investment in the registrant's securities.

b. The Commission's Authority To Change Mandatory Disclosures

As noted above, Congress permitted the Commission to make changes to the mandatory disclosures within certain limits. In this way, Congress contemplated developments in mandatory disclosure requirements but gave context and guidance for them in the governing statutes.

The relevant part of section 7(a)(1) of the Securities Act states that the Commission may require the disclosure of "such other information" not adequately covered by Schedule A if such item is "necessary or appropriate in the public interest or for the protection of investors."⁶⁹ Section 7(a)(1) also provides that the Commission may exclude from or adopt a substitute for an item in Schedule A for a class of issuers if it finds the item is not applicable and "that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement."⁷⁰ Section 12(b)(1) of the Exchange Act authorizes the Commission to determine the "detail" for the twelve enumerated categories of disclosures listed by Congress for applications to register securities on an exchange or in certain other circumstances.⁷¹ And if one of those

regulations as may be necessary or appropriate to implement the provisions of this chapter for which [it] [is] responsible or for the execution of functions vested in [it] by this chapter, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within [its] . . . jurisdiction[,], and prescribe greater, lesser, or different requirements for different classes thereof." 15 U.S.C. 78w(a)(1). This provision's general terms do not affect the specific disclosure-related authority discussed above.

⁶⁹ 15 U.S.C. 77g(a)(1); see also 15 U.S.C. 77s (allowing the Commission to prescribe "the items or details to be shown in the balance sheet and earning statement" as part of its authority to prescribe "such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses").

⁷⁰ 15 U.S.C. 77g(a)(1).

⁷¹ 15 U.S.C. 78(b)(1) (the application "shall contain" "[s]uch information, in such detail . . . as the Commission may by rules and regulations require, as necessary or appropriate in the public

enumerated categories "is inapplicable to any specified class or classes of issuers," the Commission "shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers,"⁷² closely tying the Commission's power to modify the required disclosures to Congress's original specifications. Under section 13(a) of the Exchange Act, the Commission has authority to prescribe rules requiring issuers with securities registered under section 12 "to keep reasonably current" the information and documents required by section 12(b)(1) for the registration statement and to file annual and quarterly reports.

The Securities Act and Exchange Act work together in certain circumstances. Experience with disclosures of reporting companies under section 12 of the Exchange Act may inform the Commission about the need for or inapplicability of disclosures under section 7(a)(1) of the Securities Act. Detailed disclosures or disclosures of comparable character or current information added under section 12 for reporting companies may also guide the Commission's determination about disclosures necessary for the protection of investors in a registration statement required by the Securities Act. This interrelationship between statutory provisions provides the foundation for the Commission's existing integrated disclosure system.

The Commission's rulemaking with respect to disclosures must be "channel[ed]" by and comparable to the kinds of disclosures recited in the statutes,⁷³ which refer to a registrant's business or financial characteristics. This follows from the text of the Commission's enabling statutes. As previously discussed, section 12 of the Exchange Act authorizes the Commission to specify the "detail[s]" surrounding Congress's chosen topics⁷⁴ and to substitute those topics with others for certain issuers—provided (among other things) that those substitute disclosures are "in lieu of" Congress's specified fields and "of comparable character."⁷⁵

interest or for the protection of investors, in respect of" those enumerated categories).

⁷² 15 U.S.C. 78l(c).

⁷³ *FCC v. Consumers' Rsch.*, 606 U.S. 656, 690 (2025); see also *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001) (open-ended terms in a statutory provision should be "controlled and defined by reference to the enumerated categories" in that provision, covering only objects "similar in nature" to those enumerated categories).

⁷⁴ 15 U.S.C. 78l(b)(1).

⁷⁵ 15 U.S.C. 78l(c). In keeping with these limitations, courts have struck down attempts to impose disclosures that expand beyond those

Other requirements in sections 7(a)(1), 12(b)(1), and 13(a) also guide the Commission in exercising its authority to adopt disclosure rules. The Commission must determine that a rule is "necessary or appropriate in the public interest or for the protection of investors." That public interest determination also requires consideration of efficiency, competition, and capital formation.⁷⁶ To be necessary, an addition to required disclosures should cover information not adequately elicited by an existing mandatory disclosure. To be appropriate, the additional disclosures must elicit information comparable to that elicited by the disclosures specified by Congress.

Courts have consistently held that the inclusion of the "words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation."⁷⁷ The purposes, in turn, are discerned from the text and context of a statute, which limits the scope of what is necessary or appropriate.⁷⁸ For mandatory disclosures in public offerings or periodic reports, this means that any additional, substitute, or more detailed disclosure requirements must be related to the registrant's business or financial characteristics.⁷⁹ Congress did not license the agency to act as a "roving commission to inquire into [the] evils" of corporate behavior "and upon discovery correct them."⁸⁰ Indeed, the

targeting the Exchange Act's core concerns—guarding against, among other things, "speculation, manipulation, fraud, [and] anticompetitive exchange behavior"—as exemplified by Congress's enumerated categories of information. *Alliance for Fair Board Recruitment v. SEC*, 125 F.4th 159, 164, 178 (5th Cir. 2024) (en banc) (invalidating SEC approval of Nasdaq rules requiring Nasdaq-listed companies to "disclose information about the racial, gender, and sexual characteristics of their directors").

⁷⁶ See *supra* note 49.

⁷⁷ *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976); see also *Bus. Roundtable v. SEC*, 905 F.2d 406, 413 (D.C. Cir. 1990) (explaining that statutory language about the "public interest" "must be limited to 'the purposes Congress had in mind when it enacted [the] legislation'" (quoting *NAACP*, 425 U.S. at 670); see generally *Consumers' Rsch.*, 606 U.S. at 690 (explaining that the Supreme Court has "long held that 'the words 'public interest' in a regulatory statute do not encompass 'the general public welfare' but rather 'take meaning from the purposes of the regulatory legislation'" (quoting *NAACP*, 425 U.S. at 669)).

⁷⁸ See *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) (explaining that "statutory language cannot be construed in a vacuum," but rather "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme").

⁷⁹ See *supra* note 73 and accompanying text.

⁸⁰ *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 126 (2022) (Gorsuch, J. concurring) (quoting

fact that Congress required the Commission to consider efficiency, competition, and capital formation when making a public interest determination further illustrates that “public interest” was not intended to be construed in some vague, open-ended sense but rather in terms of the public interest in well-functioning securities markets.

Likewise, the words “protection of investors” do not empower the Commission to mandate any disclosure that an investor may find useful or desirable.⁸¹ In the Adopting Release, the Commission made general assertions that climate-related information was “important” to investors⁸² and that the Final Rules would make the disclosures more consistent, comparable, and reliable.⁸³ Those considerations may play a role in the Commission’s assessment of whether a potential disclosure obligation is necessary or appropriate or promotes efficiency and capital formation, but they are not a freestanding statutory authorization to expand disclosure beyond the types of information Congress specified. If they were, there would be no meaningful limits on the Commission’s statutory authority.⁸⁴ Under such a reading, the Commission could mandate disclosure about virtually any topic, however contentious, esoteric, or parochial, provided that some subset of investors may find the information relevant to their decisions to buy or sell the registrant’s securities.

Expansive notions of the public interest and protection of investors do not provide a basis for straying beyond the types of business or financial characteristics that Congress specified. Generalized invocations of “importance

to” and “interests of” investors or “investor demand”⁸⁵ are not adequately grounded in the text, context, and limitations of the law to provide a basis for rulemaking. The statutes also do not mention consistency or comparability as a basis for a disclosure rule. Notwithstanding the Commission’s assertions in the Adopting Release, these justifications do not authorize the Commission to “update and build on” the disclosures specified in the Federal securities laws “by requiring additional disclosures of information.”⁸⁶

Materiality is also a key part of the Commission’s application of legal authority when it adopts disclosure rules. Information is material if there is a substantial likelihood that a reasonable investor would consider it important or significant in deciding whether to buy or sell a security.⁸⁷ The common interest of reasonable investors is in information regarding the financial performance of a company, the pricing of securities, and the prospect for economic and financial return from the disclosing company.⁸⁸ Accordingly, materiality is a concept inherently rooted in financial considerations.

While “materiality” is not referenced in the statutory provisions that were relied upon to promulgate the Final Rules and does not itself provide a separate basis for a disclosure obligation, this concept bears directly on the Commission’s consideration of investor protection, efficiency, and capital formation. Immaterial disclosures do not further the “public

interest” or “protection of investors”—indeed, they are likely to frustrate such objectives. The materiality standard filters out information that a reasonable investor would not consider important, protects investors from being buried in an avalanche of trivial information, and prevents the registrant from having to collect and disclose every minor detail about its operations.⁸⁹ Therefore, assuring that mandatory disclosures elicit material information is frequently part of the Commission’s required determination that such disclosures advance the goals of investor protection, efficiency, and capital formation.

The Commission’s accepted past practices illustrate these limits on its authority in operation. Current Regulation S–K, for example, contains instances of the Commission exercising its authority to adopt disclosure rules based on enumerated items of disclosure in Schedule A of the Securities Act and section 12(b)(1) of the Exchange Act. For example, Schedule A requires disclosures about securities held by officers, directors, promoters, and large shareholders and their intention to subscribe to purchases under the registration statement (paragraph 7) and the purposes for which the offered securities will supply funds (paragraph 13), but Schedule A does not explicitly require disclosures about shareholders intending to sell securities pursuant to the registration statement. Item 507 of Regulation S–K⁹⁰ requires disclosures about the names of selling shareholders, their material relationships with the issuer, and the amount they plan to sell, but these disclosures are “channel[ed]” by the kinds of disclosures recited in paragraphs 7 and 13 of Schedule A.⁹¹

As another example, to address concerns with managerial self-dealing, paragraphs 14, 20, 22, and 24 of Schedule A and section 12(b)(1)(D) through (F) require disclosures of remuneration to officers, directors, underwriters, and “other persons” over certain dollar amounts and the interests of directors, officers, and large shareholders in the securities of the issuer and material contracts they have with the issuer. Item 404 of Regulation S–K,⁹² which requires disclosure about

A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 551 (1935) (Cardozo, J. concurring).

⁸¹ See *Davis*, 489 U.S. at 809.

⁸² The Adopting Release used an expansive notion of “investor,” defining that term to include not only retail and institutional investors but also “other market participants (such as financial analysts, investment advisers, and portfolio managers) that use disclosures in Commission filings as part of their analysis to help investors.” Adopting Release at 21671 n.26.

⁸³ See, e.g., Adopting Release, section II.A.1.a.

⁸⁴ Indeed, the Supreme Court recently rejected an authority analysis similar to the one used to support the Final Rules. See *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 763–765 (2021). In that case, in an action seeking to vacate the stay of a district court judgment, the Court examined whether the CDC exceeded its authority by issuing a moratorium on evictions during the COVID–19 pandemic. The Court concluded that the CDC likely exceeded its authority by instituting the eviction moratorium because the CDC interpreted the Public Health Service Act too broadly. The Court explained that statutory language should be read in context and succeeding sentences in a statute can inform grants of authority that appear in prior sentences.

⁸⁵ See, e.g., Adopting Release, section IV.B.1.

⁸⁶ *Contra* Adopting Release at 21683.

⁸⁷ See 17 CFR 230.405 (“material” means “those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered”); 17 CFR 240.12b–2 (“material” means “those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered”); see also *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

⁸⁸ See Sean J. Griffith, *What’s “Controversial” About ESG? A Theory of Compelled Commercial Speech Under the First Amendment*, 101 Neb. L. Rev. 876, 881 (2023) (“[F]ocusing on investors qua investors reveals a common core—specifically, concern for the financial return of an investment.” (emphasis in original)); Eric C. Chaffee, *The New Old SEC*, 85 Maryland L. Rev. 468, 492–493 (2026) (“[E]ach of the Commission’s governing statutes is focused on providing investors with the truthful material information necessary to make informed investment decisions, rather than attempting to protect investors in their day-to-day lives or in other contexts”); Comm’r Elad Roisman, *Can the SEC Make ESG Rules that are Sustainable?* (June 22, 2021), available at <https://www.sec.gov/newsroom/speeches-statements/can-sec-make-esg-rules-are-sustainable> (“[W]hile any given shareholder may have bought securities for reasons other than or in addition to making money, it seems clear that a ‘reasonable investor’ is someone whose interest is in a financial return on an investment.”).

⁸⁹ See *Basic Inc.*, 485 U.S. at 231–32, 234, 238; see also *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011) (explaining and applying the *Basic Inc.* standard of materiality); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448–49 (1976) (adopting a standard of materiality under Exchange Act Rule 14a–9).

⁹⁰ 17 CFR 229.507.

⁹¹ *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 690 (2025).

⁹² 17 CFR 229.404.

transactions with related persons, is not identical to the enumerated items in Schedule A, but it is channeled by Schedule A's disclosures concerning managerial self-dealing. Similarly, Item 404 spells out certain details related to the section 12(b)(1) disclosures.⁹³

The ability to require substitute or added disclosures also enables the Commission to adapt current disclosure rules for novel financial assets or transaction structures that qualify as securities or securities transactions, subject to the same directives and guardrails discussed above. For example, instead of remuneration or payments to officers, directors, and promoters, the Commission could substitute "information of comparable character."⁹⁴

When read in the context of the mandatory disclosures in sections 7(a)(1) and 12(b)(1), it is clear that these statutes do not authorize the Commission to mandate any and all information that it deems desirable. Nor does section 13(a) give the Commission a general, freestanding power to mandate ongoing disclosures.⁹⁵ Rather, disclosure rules adopted by the Commission must be "channel[ed]" by⁹⁶ and comparable to the disclosures Congress specified in the Acts, which concern the registrant's business or financial characteristics. Despite suggestions to the contrary in the Adopting Release, the Commission is not free to construct a new disclosure regime out of whole cloth. In adopting the Final Rules, the Commission did not sufficiently adhere to these limits or

determine the best interpretation of the relevant statutes.⁹⁷ Instead, the Commission relied on an impermissibly broad reading of its statutory authority.

2. The Final Rules Exceed the Limitations on Mandatory Disclosures

The Final Rules did not respect the limitations on the Commission's authority and are fundamentally different from the types of enumerated disclosures found in the Commission's governing statutes. Those enumerated disclosures refer to a company's business or financial characteristics. By contrast, the Final Rules mandate highly specific and granular information on the sole topic of climate-related matters, such as operational and governance practices and internal metrics (including GHG emissions) that many registrants may not track or use for business purposes.⁹⁸

These disclosure obligations do not fit within the powers conferred by the statutes discussed above. While the Commission in certain other circumstances has required disclosures that are tailored to specific risks facing the disclosing company in a particular industry,⁹⁹ no prior example comes close to the breadth of disclosures required by the Final Rules, which apply across the board. The Final Rules are not comparable to the disclosures called for by the Commission's governing statutes, which refer to a company's business or financial characteristics.

The subject of each new disclosure mandated by the Final Rules, by contrast, was climate-related risks and strategies for managing those risks, as well as the financial statement effects of severe weather events and other natural conditions. Many of these disclosures were only secondarily or remotely about the past or immediate effects of climate-related matters on the operations, revenue, expenses, capital structure, liquidity, management or controlling shareholders of the registrant. For example, the Final Rules require disclosure about climate-related impacts on third parties (such as suppliers, purchasers, or counterparties to material contracts)¹⁰⁰ as well as transition risks—defined expansively to include, among other things, "the actual or potential negative impacts on a registrant's business . . . attributable to

regulatory, technological, and market changes, . . . changes in law or policy, reduced market demand for carbon intensive products, . . . [and] competitive pressures associated with the adoption of new technologies, and reputational impacts" ¹⁰¹ The Final Rules also require the disclosure of internal analysis and metrics, such as scenario analysis ¹⁰² and internal carbon prices.¹⁰³

As discussed above, the Commission's disclosure authority under its governing statutes must be construed in light of the text and context of the surrounding statutory provisions. Nothing in these provisions expressly empowers the agency to burden public companies and their shareholders with such detailed (and costly) disclosures about one particular topic. Indeed, the scope of the Final Rules stands in stark contrast to the more limited and targeted disclosures the Commission has previously required on environmental matters, as discussed in section III.C.1.a.

Nor does the inclusion of materiality qualifiers salvage the Final Rules from their legal defects. While the Adopting Release claimed that such qualifiers would limit the scope, and therefore the burdens, of the Final Rules, as discussed in more detail in section III.C.3, the use of such qualifiers in such a complex, interconnected, and highly prescriptive set of disclosure requirements does not adequately cabin those requirements within the bounds of the Commission's authority. In particular, while the requirement to disclose Scope 1 and Scope 2 GHG emissions is qualified by materiality,¹⁰⁴ it nonetheless requires covered registrants to devote significant time and resources to measure their emissions and determine whether they are material, including establishing organizational boundaries and operational boundaries and adopting a specific reporting protocol or standard.¹⁰⁵ Only after it has invested potentially significant resources to perform this exercise can a registrant make a determination about whether such metrics are material and therefore must be disclosed.¹⁰⁶ Rather than limiting the costs and burdens of the Commission's emissions reporting requirements, the rule's materiality qualifier effectively compels covered registrants to track and evaluate a metric

⁹³ In formulating a substitute disclosure, the Commission frequently must consider materiality as part of its evaluation of efficiency, competition, capital formation, and the protection of investors, as discussed below.

⁹⁴ 15 U.S.C. 78l(c).

⁹⁵ *Contra* Adopting Release at 21683 n.177 and accompanying text (quoting Exchange Act section 13(a) [15 U.S.C. 78m(a)]). Section 19(a) of the Securities Act and section 23(a)(1) of the Exchange Act confer general rulemaking authority. General rulemaking authority remains subject to statutory context and cannot be read to expand the Commission's authority to adopt disclosure regulations beyond the limitations set forth in the federal securities laws. By their terms, sections 19(a) and 23(a)(1) may be used as necessary "to carry out" or "to implement" other provisions in the Securities Act or the Exchange Act and, therefore, for purposes of disclosure in a registration statement or periodic report, do not extend beyond the more specific terms in the previously discussed statutory provisions. See *New York Stock Exch. LLC v. SEC*, 962 F.3d 541, 556 (D.C. Cir. 2020) ("[A] 'necessary or appropriate' provision in an agency's authorizing statute does not necessarily empower the agency to pursue rulemaking that is not otherwise authorized."). Thus, the Commission could not have relied on its general rulemaking power in Securities Act section 19(a) and Exchange Act section 23(a)(1) to adopt the Final Rules.

⁹⁶ *Consumers' Rsch.*, 606 U.S. at 690.

⁹⁷ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024) (explaining that "[i]n the business of statutory interpretation, if it is not the best [interpretation], it is not permissible").

⁹⁸ See *supra* section II.

⁹⁹ See, e.g., 17 CFR 210.12–29 (mortgage loans on real estate for certain real estate companies).

¹⁰⁰ See 17 CFR 229.1502(b)(3).

¹⁰¹ 17 CFR 229.1500.

¹⁰² See 17 CFR 229.1502(f).

¹⁰³ See 17 CFR 229.1502(g).

¹⁰⁴ 17 CFR 229.1505(a)(1).

¹⁰⁵ See Adopting Release at 21875.

¹⁰⁶ *Id.*

they may not otherwise use for business purposes.

Similarly, invoking the impact of climate-related risks on a registrant's business, results of operations, or financial condition is not sufficient, in itself, to justify the Final Rule's myriad highly specific disclosure requirements. For example, the Final Rules require registrants to provide disclosures regarding their use of transition plans,¹⁰⁷ scenario analysis,¹⁰⁸ and internal carbon prices, if material.¹⁰⁹ The Adopting Release repeatedly asserted that such disclosures were necessary to value a registrant's securities or evaluate its financial performance,¹¹⁰ but the exceedingly granular nature of the information required by the Final Rules goes well beyond what must be disclosed in respect of the many other factors that may affect the valuation of a registrant's securities. As noted above, to be necessary, an addition to required disclosures should cover material information not adequately elicited by an existing mandatory disclosure. When climate change or other environmental issues, including transition risk, have materially affected the operations or financial performance of a specific company, existing disclosure rules require discussion of the effects. Indeed, the Commission's *Guidance Regarding Disclosure Related to Climate Change*¹¹¹ lists a variety of specific existing disclosure obligations that, depending on the particular circumstances of a company, could require disclosure of climate change matters. For example, Item 303 of Regulation S-K requires, among other things, a company to disclose and discuss any known trend or uncertainty that has had a material positive or negative consequence for the company's results of operations.¹¹² The fact that existing disclosure obligations already serve to provide investors with material information about climate-related matters reinforces the conclusion that the Final Rules are not "necessary" to protect investors.¹¹³ Indeed, they may

even serve to harm investors by eliciting information about climate-related matters that goes well beyond what a reasonable investor needs to make an informed investment decision.¹¹⁴

In addition to creating a disclosure regime far beyond the kind authorized by the Commission's enabling statutes, the Final Rules also intrude on State authority over core matters of corporate governance. "No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations."¹¹⁵ Although the Final Rules purport to require issuers only to *disclose* information, the effect of their requirements is to impermissibly regulate issuers' internal affairs. The many "ifs" in the Final Rules are telling in this regard. While framed in terms of risks to and impacts on the registrant, the disclosure mandates in the Final Rules effectively provide an aspirational framework for how public companies should manage climate-related matters.

The Commission's existing rules typically require disclosure of ongoing compliance or legal matters when they are material—they do not pressure or require registrants to create and maintain dedicated risk management systems that prioritize one category of risks above all others.¹¹⁶ By contrast, the Final Rules create a highly detailed and prescriptive regime focused on a single category of risk.¹¹⁷ For example, the

proper protection of investors and to insure fair dealing in the security").

¹¹⁴ See *infra* section III.C.1.b.

¹¹⁵ *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987); see also *Burks v. Lasker*, 441 U.S. 471, 478 (1979) ("[T]he first place one must look to determine the powers of corporate directors is in the relevant State's corporation law.").

¹¹⁶ See, e.g., *Disclosures Pertaining to Matters Involving the Environment and Civil Rights*, Release No. 33-5170 (July 19, 1971) [36 FR 13989 (July 29, 1971)] (interpreting Commission rules and forms to require disclosure about "compliance with statutory requirements with respect to environmental quality" when such compliance efforts "may necessitate significant capital outlays," "may materially affect the earning power of the business," or "cause material changes in [the] registrant's business"); *Disclosure with Respect to Compliance with Environmental Requirements and Other Matters*, Release No. 33-5386 (Apr. 20, 1973) [38 FR 12100 (May 9, 1973)] at 12100-01] (adopting amendments requiring registrants to disclose material effects of compliance with environmental laws on the capital expenditures, earnings, and competitive position of the registrant and administrative or judicial proceedings arising under environmental laws if "material to the business or financial condition of the registrant" or relating to certain claims exceeding 10% of assets); see also 17 CFR 229.101(c)(2)(i), (h)(4)(xi) (requiring disclosure of certain material effects of compliance with environmental regulations).

¹¹⁷ Similarly, the Final Rules contrast with the approach taken by the Commission in the 2010 Guidance, when it explained that, in certain circumstances and for some companies, regulatory, legislative, and other developments related to

Final Rules require disclosure of the board of directors' role in managing climate-related risks, which overlaps with existing disclosure requirements related to the role of the registrant's board in risk oversight.¹¹⁸ In addition, while materiality qualifiers were added at the adopting stage, given the detailed nature of the requirements, the Final Rules effectively require many registrants to conduct new analyses or gather new data for the sole purpose of determining *whether* they have a disclosure obligation.¹¹⁹

To house these extensive new reporting requirements, the Commission created a new subpart 1500 of Regulation S-K as well as a new Article 14 of Regulation S-X. Each of these regulations contain detailed line item requirements related to such varied matters as transition plans,¹²⁰ scenario analysis,¹²¹ internal carbon prices,¹²² GHG emissions,¹²³ and the aggregate amount of carbon offsets and RECs expensed.¹²⁴ Most of these items apply equally across all types of registrants. The anticipated response of registrants to the creation of such a detailed regime dedicated to a single category of risks is clear: all registrants will pay attention to climate-related matters and dedicate significant board, executive, and employee resources to manage them. This broad mandate interferes with the management of companies and trenches

climate change "could have a significant effect on operating and financial decisions." 2010 Guidance at 6291. As such, the Commission's existing disclosure requirements—like those that require disclosure of a registrant's description of its business, legal proceedings, risk factors, and management's discussion and analysis—might apply to climate-related issues. In contrast to the Final Rules, these prior initiatives are consistent with the Commission's long-held recognition that types of information "which are of importance only in certain circumstances have generally not been made the subject of specific disclosure requirements." Environmental and Social Disclosure Release, *infra* note 131.

¹¹⁸ See 17 CFR 229.407(h) ("[D]isclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.").

¹¹⁹ See, e.g., 17 CFR 229.1505 (GHG emissions metrics). The Adopting Release acknowledges that in order to comply with 17 CFR 229.1505, most, if not all, LAFs and AFs that are not EGCs or SRCs will need to assess or estimate their Scope 1 and 2 emissions to reach a materiality determination. As a result, these registrants will, to some extent, need to adopt controls and procedures to assess the materiality of their Scope 1 and 2 emissions and determine whether disclosure is required if they do not already have them in place. Adopting Release at 21859.

¹²⁰ 17 CFR 229.1502(e).

¹²¹ 17 CFR 229.1502(f).

¹²² 17 CFR 229.1502(g).

¹²³ 17 CFR 229.1505.

¹²⁴ 17 CFR 210.14-02(e).

¹⁰⁷ See 17 CFR.229.1502(e).

¹⁰⁸ See 17 CFR.229.1502(f).

¹⁰⁹ See 17 CFR.229.1502(g).

¹¹⁰ Adopting Release at 21669, 21671, 21846-48.

¹¹¹ Release No. 33-9106 (Feb. 2, 2010) [75 FR 6290 (Feb. 8, 2010)] ("2010 Guidance").

¹¹² 17 CFR 229.303 (Management's discussion and analysis of financial condition and results of operations).

¹¹³ See 15 U.S.C. 77g(a)(1); 15 U.S.C. 78(b)(1); see also 15 U.S.C. 78m(a) (requiring every issuer of a security registered pursuant to section 12 to file certain reports with the Commission in accordance with such rules and regulations "as the Commission may prescribe as necessary or appropriate for the

upon the traditional role of States in regulating corporations.¹²⁵

On the rare occasions when Congress has intervened in corporate governance, it has given explicit direction for the Commission to do so.¹²⁶ Congress has not done so with respect to management of climate-related matters. Such a conduct-altering regime, unrelated to managerial self-dealing,¹²⁷ simply was not contemplated by Congress when it specified the fundamental disclosures that a registrant should provide when conducting a public offering in the United States or trading in U.S. markets. This effort to regulate corporate management interferes with the role of the States in regulating corporate governance and contravenes the “clear statement” rule that the Supreme Court applies when regulatory actions raise federalism concerns.¹²⁸

¹²⁵ Cf. *Bus. Roundtable v. SEC*, 905 F.2d 406, 411–412 (D.C. Cir. 1990) (rejecting effort by Commission “to establish a federal corporate law by using access to national capital markets as its enforcement mechanism”).

¹²⁶ See, e.g., Exchange Act section 10A(m) (directing the Commission to adopt rules requiring national securities exchanges to prohibit the listing of any security of an issuer that does not meet certain specified requirements related to audit committee procedures and independence) [15 U.S.C. 78j–1(m)]; Exchange Act section 10C(f) (directing the Commission to adopt rules to direct national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with specified requirements related to compensation committees) [15 U.S.C. 78j–3(f)]; Exchange Act section 14B (directing the Commission to adopt rules requiring disclosure of the reasons why the issuer has chosen the same person to serve as chairman of the board of directors and chief executive officer or different individuals to serve as chairman of the board of directors and chief executive officer) [15 U.S.C. 78n–2]. Around the same time that Congress enacted the Securities Act and Exchange Act, it also enacted the Public Utilities Holding Company Act of 1935 [15 U.S.C. 79 *et seq.* (repealed 2005)] (“PUHCA”). Although now repealed, PUHCA provided the Commission with extensive power to refashion the structure and business practices of an entire industry. See, e.g., *Am. Power & Light Co. v. SEC*, 329 U.S. 90 (1946) (upholding the Commission’s authority under PUHCA to require that each registered holding company, and each subsidiary company thereof, take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system). PUHCA thus stood in sharp contrast to the two prior federal securities laws, which focused on disclosure. The history of PUHCA demonstrates that Congress knows how to empower the agency to intervene in internal corporate affairs when it wishes to do so.

¹²⁷ See 15 U.S.C. 78l(b)(1)(D); 17 CFR 240.14a–101.

¹²⁸ *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021) (“Our precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power”) (quoting *U.S. Forest Serv. v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 621–622 (2020)).

The past practices the Commission cited in the Adopting Release also do not justify the Final Rules. According to the Supreme Court, “[i]t is telling” when an agency that “has never before adopted a broad . . . regulation” over many decades now seeks to do so, suggesting “that the mandate extends beyond the agency’s legitimate reach.”¹²⁹ Until the Final Rules, the Commission had never before adopted a sweeping set of disclosure requirements on climate-related issues; indeed, in prior years, it specifically declined to do so.

In adopting the Final Rules, the Commission pointed as precedent to environmental disclosure requirements first adopted in the 1970s, asserting that “the Commission for the last fifty years has also required disclosure about various environmental matters.”¹³⁰ But a complete and balanced reading of the record from the 1970s about environmental disclosures tells a different story. The dominant themes from the Commission at the time were doubts about its powers and how investors would use Commission-mandated environmental disclosures.¹³¹

The narrow disclosures adopted in the 1970s were in response to a specific congressional directive contained in the National Environmental Policy Act of 1969 (“NEPA”),¹³² which required the Commission and other Federal agencies to develop procedures to consider environmental values in decision-making. In 1975, in considering its obligations under NEPA, the Commission noted that “it is generally not authorized to consider the

promotion of social goals unrelated to the objectives of the Federal securities laws.”¹³³ It further observed that “the discretion vested in the Commission under the Securities Act and the Securities Exchange Act to require disclosure which is necessary or appropriate ‘in the public interest’ does not generally permit the Commission to require disclosure for the sole purpose of promoting social goals unrelated to those underlying these Acts.”¹³⁴ Rather, disclosure mandates under the Federal securities laws had to relate to the financial condition of, and matters of economic significance to, the disclosing company.¹³⁵

The Commission therefore proposed and ultimately adopted a small number of narrow rules generally consistent with the disclosure framework in the Federal securities laws. For example, under the 1975 amendments, a reporting company must disclose material effects on capital expenditures, earnings, and competitive position from compliance with government environmental regulation.¹³⁶ The 1975 rules did not include disclosure about environmental strategies or plans or board oversight of environmental risks; nor did they include expansive requirements that companies track and assess the environmental impact of their operations.

As recently as 2016, the Commission reconsidered its authority to require disclosures on environmental and social issues as part of a concept release on the business and financial disclosure requirements in Regulation S–K.¹³⁷ Summarizing its 1975 conclusion on lack of statutory authority, the Commission observed that, in 1975, following extensive proceedings on these topics, the Commission concluded that it “generally is not authorized to consider the promotion of goals unrelated to the objectives of the federal securities laws when promulgating disclosure requirements, although such considerations would be appropriate to further a specific congressional mandate.”¹³⁸ The Commission also observed that, since 1975, Congress had not given new statutory authority for disclosures in these areas.¹³⁹ While the

¹³³ Environmental and Social Disclosure Release at 51656.

¹³⁴ *Id.* at 51660.

¹³⁵ See *id.* at 51658.

¹³⁶ *Id.* at 51667.

¹³⁷ See *Business and Financial Disclosure Required by Regulation S–K*, Release No. 33–10064 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)] (“Regulation S–K Concept Release”).

¹³⁸ *Id.* at 23971 (footnote omitted).

¹³⁹ *Id.* (“The current statutory framework for adopting disclosure requirements remains generally

¹²⁹ *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 119 (2022).

¹³⁰ Adopting Release at 21685.

¹³¹ See, e.g., *Environmental and Social Disclosure*, Release No. 33–5627 (Oct. 14, 1975) [40 FR 51656 (Nov. 6, 1975)] (“Environmental and Social Disclosure Release”). In the Environmental and Social Disclosure Release, the Commission discussed commenters’ interest in registrants’ disclosures of the environmental impact of their activities. *Id.* at 51663. The Commission noted that those “who supported social disclosure were virtually unanimous in stating that . . . environmental, . . . or other social information is in fact economically significant.” *Id.* at 51664. The Commission noted that the “majority” of investors who commented indicated that such information might play a role in how they voted on shareholder proposals, while a “lesser number” indicated that they would take this data into account in determining what securities to purchase, hold, or sell, and that many of the religious institutions that commented stated they would use such information in deciding whether to engage with management to “change some policy.” *Id.* The Commission concluded that “[a]t this time, therefore, it appears that those investors who are interested in social disclosures would use this information more in making voting rather than investment decisions.” *Id.* at 51665.

¹³² 42 U.S.C. 4321 *et seq.*

Commission in 2016 stated that the “role of sustainability and public policy information in investors’ voting and investment decisions may be evolving” and solicited comment on the need for new sustainability and social disclosures, it also noted concerns about such disclosures and ultimately determined in 2020 to revise, but not significantly expand upon, the provisions adopted in 1975.¹⁴⁰

In sum, until the Final Rules, the Commission has consistently declined to use its statutory authority to mandate expansive environmental disclosures; instead, the Commission has required certain targeted disclosures about regulatory compliance and legal liability that directly bear on the financial condition of the disclosing company. The rulemaking in the 1970s does not support the Commission’s statutory authority to issue the Final Rules, which stray beyond those limits. It is precedent against that authority.

Finally, and for similar reasons, the major questions doctrine further demonstrates that the Commission lacked authority to promulgate the Final Rules. The Supreme Court has held that agencies must have clear authorization from Congress when embarking on a new and expansive regulation of a substantial policy area of “vast economic and political significance.”¹⁴¹ Political controversies are for Congress to resolve, not administrative agencies with limited delegated authority.¹⁴² In addition, when “agencies assert[] highly consequential power beyond what Congress could reasonably be understood to have granted,” or “claim[] to discover in a long-extant statute an unheralded power

representing a transformative expansion [of] . . . regulatory authority,” “there is every reason to hesitate before concluding that Congress meant to confer” the power claimed.¹⁴³ Moreover, “[w]hen an agency has no comparative expertise in making certain policy judgments, . . . Congress presumably would not task it with doing so.”¹⁴⁴ Finally, an intrusion “into an area that is the particular domain of State law,”¹⁴⁵ also provides a strong indicator that, “absent a clear statement” from Congress, a Federal agency has exceeded its statutory authority.¹⁴⁶

These indicia that the Commission transgressed the limits of its statutory authority under the major questions doctrine are all present here. Whether and how public companies should respond to the perceived causes and effects of climate change is unquestionably of “vast economic and political significance”;¹⁴⁷ answering

¹⁴³ *Id.* at 724–25 (citations and quotation marks omitted).

¹⁴⁴ *Id.* at 729 (citation, quotation marks, and brackets omitted); see also *Biden v. Nebraska*, 600 U.S. 477, 518 (2023) (Barrett, J., concurring) (“Another telltale sign that an agency may have transgressed its statutory authority is when it regulates outside its wheelhouse.”).

¹⁴⁵ *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021); see also *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 479 (1977) (rejecting an interpretation of 17 CFR 240.10b–5 (“Rule 10b–5”) that “would overlap and quite possibly interfere with state corporate law”); *Bus. Roundtable v. SEC*, 905 F.2d 406, 408 (D.C. Cir. 1990) (“[T]he Exchange Act cannot be understood to include regulation of an issue that is so far beyond matters of disclosure . . . and that is concededly a part of corporate governance traditionally left to the states.”); *All. for Fair Bd. Recruitment v. SEC*, 125 F.4th 159, 180 (5th Cir. 2024) (stating that “no part of the Exchange Act even hints at SEC’s purported power to remake corporate boards using diversity factors”); *Environmental and Social Disclosure Release at 51660* (“Although disclosure requirements may have some indirect effect on corporate conduct, the Commission may not require disclosure solely for this purpose.”). We discuss how the Final Rules reflect an impermissible intrusion into the domain of State corporate law earlier in this section.

¹⁴⁶ *West Virginia v. EPA*, 597 U.S. at 736 (Gorsuch, J., concurring).

¹⁴⁷ See Michael Jones-Correa, *Idea #23, Climate Change as a Political Problem*, Impact, Value & Sustainable Bus. Initiative, Wharton Sch., Univ. of Penn. (Aug. 16, 2019), available at <https://impact.wharton.upenn.edu/climate-center/climate-change-as-a-political-problem/> (stating that “climate change is as much a political problem as it is a scientific or technical one”); Elaine Kamarck, *The Challenging Politics of Climate Change*, Brookings Inst. (Sept. 23, 2019), available at <https://www.brookings.edu/articles/the-challenging-politics-of-climate-change/> (stating that “climate change remains the toughest, most intractable political issue we, as a society, have ever faced”); see also Cong. Budget Off., *The Risks of Climate Change to the United States in the 21st Century* (Dec. 2024), available at <https://www.cbo.gov/publication/61146> (setting forth how climate change could affect, among other things, GDP, real

those questions, even with respect to disclosure, requires “balancing the many vital considerations of national policy implicated in how Americans will get their energy.”¹⁴⁸ And as explained above, while the Final Rules purport to require only disclosure, the effect of their requirements is to impermissibly regulate issuers’ internal affairs. In this regard, the Final Rules stray into areas far beyond the Commission’s comparative expertise. Moreover, by effectively mandating certain risk management practices, the Final Rules intrude on an area—corporate governance—traditionally governed by State law. Thus, the major questions doctrine applies to the Final Rules, but as explained in the preceding section, the Commission’s authorizing statutes do not provide the needed clarity to justify such a dramatic expansion of regulatory authority.

The assertion of regulatory power under the Final Rules represents a “transformative expansion in [the Commission’s] regulatory authority.”¹⁴⁹ For example, the Final Rules require LAFs and AFs to disclose their Scope 1 emissions and/or Scope 2 emissions, if material, separately, each expressed in the aggregate, in terms of CO₂e.¹⁵⁰ In addition, the Final Rules require registrants to provide disclosures regarding their use of transition plans,¹⁵¹ scenario analysis,¹⁵² and internal carbon prices, if material,¹⁵³ as well as descriptions of their board of directors’ oversight of climate-related risks, regardless of materiality.¹⁵⁴ The scope of that expansion is reflected in the costs that the Commission estimated the Final Rules will impose on registrants. The Commission estimated that annual compliance costs per registrant averaged over the first ten years of compliance could range from less than \$197,000 to over \$739,000.¹⁵⁵ Updating these figures for inflation and aggregating them across all affected registrants, we estimate that rescinding the Final Rules could generate annualized savings of about \$4.9 billion

estate and financial markets, and the Federal budget).

¹⁴⁸ *West Virginia v. EPA*, 597 U.S. at 729.

¹⁴⁹ *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014); see *id.* (“The power to require permits for the construction and modification of tens of thousands, and the operation of millions, of small sources nationwide falls comfortably within the class of authorizations that we have been reluctant to read into ambiguous statutory text.”).

¹⁵⁰ See 17 CFR 229.1505(a).

¹⁵¹ See 17 CFR 229.1502(e).

¹⁵² See 17 CFR 229.1502(f).

¹⁵³ See 17 CFR 229.1502(g).

¹⁵⁴ See 17 CFR 229.1501(a).

¹⁵⁵ Adopting Release at 21875.

consistent with the framework that the Commission considered in 1975.”).

¹⁴⁰ Specifically, the Commission: (i) refocused the regulatory compliance disclosure requirement by including as a topic all material government regulations, not just environmental laws; and (ii) implemented a modified disclosure threshold that increased the existing quantitative threshold for disclosure of environmental proceedings to which the government is a party from \$100,000 to \$300,000, but that also affords a registrant the flexibility to select a different threshold that it determines is reasonably designed to result in disclosure of material environmental proceedings, provided that the threshold does not exceed the lesser of \$1 million or one percent of the current assets of the registrant and its subsidiaries on a consolidated basis. See *Modernization of Regulation S-K, Items 101, 103, and 105*, Release No. 33–10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)].

¹⁴¹ *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)) (quotation marks omitted).

¹⁴² *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“We presume that Congress intends to make major policy decisions itself, not leave those decisions to agencies.” (citation and quotation marks omitted)).

per year over the next 10 years for all affected registrants.¹⁵⁶

As discussed in section III.B.1 and section III.B.2, Congress has not given the Commission power to write regulations requiring such detailed and extensive disclosure of climate-related information, let alone to essentially regulate issuers' internal affairs through onerous disclosure requirements. To the contrary, questions about the country's response to climate change generally and about climate-related disclosures by public companies specifically continue to be important and contentious. Congress is clearly aware of the potential and claimed risks posed by climate change, yet it has not legislated directly nor instructed the Commission to adopt regulations in response.¹⁵⁷ Instead, Congress has declined to enact climate-related disclosure legislation.¹⁵⁸

In evaluating an agency's assertion of statutory authority, the Supreme Court has instructed that courts "must be guided to a degree by 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."¹⁵⁹ Common sense would say that the Securities and Exchange Commission is not the right agency to deal with the question of how public companies can or should respond to climate change and related matters. The Commission clearly has no expertise, scientific or otherwise, related to climate-related risks or the criteria or analytical frameworks to be used in evaluating such risks.¹⁶⁰ Congress has created an agency—the Environmental Protection Agency—and tasked that agency with collecting reports from major emissions sources and making them available to

the public.¹⁶¹ In adopting the Final Rules, the Commission acted well "outside its wheelhouse."¹⁶² Common sense suggests that Congress would not allocate authority over climate change and related matters to the Commission.

In light of the controversy, costs, and intrusions into the operations of public companies that would be generated by mandatory climate-related disclosure rules, this is a choice for Congress, not the Commission, to make. That conclusion is reinforced by the mismatch between the Commission's area of expertise and the subject matter of climate change. Further, Congress has not authorized the Commission to interfere in the corporate governance of registrants with respect to climate change. Congress has continued to leave such corporate governance matters to the States. The Commission's asserted basis for the Final Rules does not satisfy the clear evidence of congressional authorization required by the major questions doctrine. "Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" ¹⁶³

3. The Final Rules Should Be Rescinded in Their Entirety

Even if the Commission had authority to adopt some of the Final Rules, the Final Rules should nevertheless be rescinded in their entirety. Although the Commission stated in the Adopting Release that it intended for the Final Rules to operate independently,¹⁶⁴ upon reconsideration, we now conclude that the individual items of disclosure in the Final Rules are pieces of a larger whole and cannot operate sensibly without the others. For example, the text of the Final Rules sometimes explicitly connects one part of the rules to others.¹⁶⁵ In addition, parts of the Adopting Release demonstrate the functional inter-relationship between different disclosure requirements. For example,

the Adopting Release states that the financial statement disclosures "facilitate investors' assessment of particular types of" climate-related risk and that there is "significant overlap" between the narrative and financial statement disclosures.¹⁶⁶ As another example, Rule 14-02(e)(1) requires disclosure of costs, expenditures, and losses for carbon offsets and RECs.¹⁶⁷ The Adopting Release states that these disclosures are directly connected to "a registrant's plans to achieve its disclosed climate-related targets or goals" ¹⁶⁸ and "will complement the disclosures required by the amendments to Regulation S-K and will anchor the disclosures required outside the financial statements to those required within the financial statements."¹⁶⁹ As a result, disclosure under these items is unlikely to be sensible to investors in the absence of the other disclosures mandated by the Final Rules.

C. Policy Reasons for Rescinding the Final Rules

In addition to (and independent of) the legal authority defects discussed above, there are strong policy arguments for rescinding the Final Rules in their entirety. As the Supreme Court has stated, "[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change."¹⁷⁰ On reconsideration, we have determined that the Adopting Release gave inappropriate weight to several of the main justifications for adopting the Final Rules, and we now reach a different policy judgment regarding the need for, and appropriateness of, the Final Rules. Consequently, we propose to rescind the Final Rules in their entirety.

Several independent policy judgments support a rescission of the Final Rules. First, the Final Rules deviate from the Commission's "long-standing commitment to a principles-based, registrant-specific approach to disclosure" that is "rooted in materiality and facilitate[s] an understanding of a

¹⁵⁶ See *infra* section IV.C.3.

¹⁵⁷ See, e.g., Letter from United States Senators Pat Toomey, Richard Shelby, Mike Crapo, Tim Scott, M. Michael Rounds, Thom Tillis, John Kennedy, Bill Hagerty, Cynthia Lummis, Jerry Moran, Kevin Cramer & Steve Daines (Jun. 15, 2022), <https://www.sec.gov/comments/s7-10-22/s71022-20133994-303877.pdf> ("Addressing matters like global warming requires political decisions involving tradeoffs. In a democratic society, those tradeoffs must be made by elected representatives, who are accountable to the American people, not unelected financial regulators.").

¹⁵⁸ See, e.g., S. 1217, 117th Cong. ("Climate Risk Disclosure Act of 2021"); H.R. 2570, 117th Cong. ("Climate Risk Disclosure Act of 2021"); H.R. 1187, 117th Cong. (2021) ("Corporate Governance Improvement and Investor Protection Act"); S. 3481, 115th Cong. (2018) ("Climate Risk Disclosure Act").

¹⁵⁹ *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000).

¹⁶⁰ See *West Virginia v. EPA*, 597 U.S. 697, 729 (2022) ("When an agency has no comparative expertise in making certain policy judgments, we have said, Congress presumably would not task it with doing so." (citations and quotation marks omitted)).

¹⁶¹ 42 U.S.C. 7414; see also *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011) (Congress delegated to the Environmental Protection Agency "the decision whether and how to regulate carbon-dioxide emissions from power plants").

¹⁶² *Biden v. Nebraska*, 600 U.S. 477, 518 (2023) (Barrett, J., concurring).

¹⁶³ *West Virginia v. EPA*, 597 U.S. at 723 (citation omitted).

¹⁶⁴ See Adopting Release at 21829. Courts give varying amounts of weight to such agency statements. See *Nasdaq Stock Mkt. LLC v. SEC*, 38 F.4th 1126, 1145 (D.C. Cir. 2022); *Nat'l Ass'n. Mfrs. v. SEC*, 105 F.4th 802, 815–816 (5th Cir. 2024).

¹⁶⁵ See 17 CFR 210.14–01(a) (providing that Article 14 disclosures are required in filings that are required to include disclosure pursuant to subpart 1500 of Regulation S-K); see also Adopting Release at 21779 n.1744 (referencing 17 CFR 210.14–01(a)).

¹⁶⁶ Adopting Release at 21670, 21799–21800.

¹⁶⁷ See 17 CFR 201.14–02(e)(1).

¹⁶⁸ Adopting Release at 21675, 21913.

¹⁶⁹ *Id.* at 21800–01.

¹⁷⁰ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). The Court in *Encino Motorcars* further noted that "[w]hen an agency changes its existing position, it 'need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate.' . . . But the agency must at least 'display awareness that it is changing position' and 'show that there are good reasons for the new policy.' . . . In explaining its changed position, an agency must also be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Id.* at 221–22 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

registrant's business, financial condition and prospects[.]”¹⁷¹ The Final Rules’ sharp departure from these important tenets provides investors, at great cost, with an avalanche of information that is unlikely to be material to the decision-making of a reasonable investor. Second, the Final Rules require registrants to provide costly and lengthy disclosures about climate-related matters, a divisive social and political issue that is well outside the policy concerns of the Federal securities laws. In so doing, the Final Rules inappropriately intrude on corporate decision-making. Third, the Final Rules impose substantial costs on public companies and their shareholders that are not justified by the informational benefits they may provide to some investors. Finally, imposing those same high costs on registrants is at odds with the Commission’s policy objectives of facilitating capital formation and promoting public company status.

As discussed more fully below, a responsible approach to public company disclosure demands that the Final Rules be rescinded in their entirety.¹⁷²

1. The Final Rules Are Unnecessary and Inconsistent With a Registrant-Specific, Materiality-Based Approach To Disclosure That Best Serves the Interests of Registrants and Investors

The Final Rules are unnecessary because existing disclosure requirements already elicit information about the material effects of climate-related matters. Furthermore, the Final Rules prioritize one potential factor over others that may materially affect a registrant’s operations and financial condition. Finally, recent events, such as the European Union’s efforts to narrow the coverage and scope of recently adopted sustainability and due diligence directives and extend their implementation deadlines, have highlighted the flaws in mandating such highly prescriptive disclosure for an evolving area, such as climate-related matters, as in the Final Rules.

a. Existing Disclosure Obligations and Anti-Fraud Provisions Already Elicit Information About the Material Effects of Climate-Related Matters

The Final Rules should be rescinded because the Commission’s existing disclosure requirements and anti-fraud provisions already elicit information about the effects of climate-related matters in a way that is tailored to reflect registrants’ particular circumstances, is focused on material information for investors, and does not impose upon registrants the additional costs and burdens of the Final Rules.¹⁷³

As the Commission highlighted in the 2010 Guidance, various disclosure requirements apply to climate-related matters when they are material to a particular company. In particular, the 2010 Guidance highlighted Regulation S-K items related to description of business, legal proceedings, risk factors, and management’s discussion and analysis. The 2010 Guidance also noted that registrants must consider any financial statement implications in accordance with applicable accounting standards. As the Commission acknowledged in the Adopting Release, even prior to the adoption of the Final Rules, registrants had an obligation to consider material impacts on the financial statements regardless of whether a material impact was driven by climate-related matters.¹⁷⁴

In addition to existing line item and financial statement disclosure requirements, the liability provisions of the Federal securities laws, including the anti-fraud provisions, serve to protect investors from materially misleading or incomplete disclosures about climate-related matters. For example, Sections 11¹⁷⁵ and 12¹⁷⁶ of the Securities Act impose liability for material misstatements or omissions made in connection with registered offerings conducted under the Securities Act,¹⁷⁷ and Exchange Act Section

10(b)¹⁷⁸ and Rule 10b-5 broadly prohibit fraudulent and deceptive practices and untrue statements or omissions of material facts in connection with the purchase or sale of any security.¹⁷⁹

We recognize that the Commission previously stated that it adopted the Final Rules because of a “need to improve the consistency, comparability, and reliability of climate-related disclosures for investors.”¹⁸⁰ We disagree, however, that these purported benefits justify adoption of the Final Rules. As an initial matter, any assertions about the benefits of the consistency and comparability of the disclosures elicited by the Final Rules should be discounted because those benefits are substantially compromised by the inconsistent, variable, and often speculative assumptions necessary to make many of those disclosures.¹⁸¹ As a result, the type of information elicited by the Final Rules would vary across even similarly-situated registrants, depending on, for instance, whether they engage in certain practices, how they choose to report certain information, how they determine which expenditures to include, what methodologies they use, and how they exercise judgment in assessing which financial disclosures to make.¹⁸² Moreover, as noted above, prior to adoption of the Final Rules, registrants were already required to disclose information about the material effects of climate-related matters in a manner better tailored to reflect registrants’ particular circumstances. The benefits of more tailored and effective disclosure in this context justify any potential loss in comparability because they allow for more particularized insight into a

necessary to make the required statements, in the light of the circumstances under which they are made, not misleading).

¹⁷⁸ 15 U.S.C. 78j(b).

¹⁷⁹ See also 17 CFR 240.12b-20 (in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading).

¹⁸⁰ Adopting Release at 21679.

¹⁸¹ See, e.g., Adopting Release at 21810 (“The financial statement disclosures we are adopting may involve estimation uncertainties that are driven by the application of judgments and assumptions”) and 21734-35 (“[T]he final rule will require a registrant to describe the methodology, significant inputs, and significant assumptions used to calculate the registrant’s disclosed GHG emissions . . . [and] will require a registrant to disclose whether it calculated its GHG emissions metrics using an approach pursuant to the GHG Protocol’s Corporate Accounting and Reporting Standard, an EPA regulation, an applicable ISO standard, or another standard.”).

¹⁸² See discussion *infra* section IV.C.2.a.3.

¹⁷¹ *Modernization of Regulation S-K, Items 101, 103, and 105*, Release No. 33-10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)] at 63727.

¹⁷² We note that, because the effectiveness of the Final Rules has been stayed and the Final Rules have never become effective, we do not expect that the proposed rescission would implicate any reasonable reliance interests that market participants may have had in the operation of the rules.

¹⁷³ See discussion *infra* section IV.B.2.a.1; see also discussion *infra* section IV.B.3.a and Adopting Release at 21831.

¹⁷⁴ Adopting Release at 21797-98 n.2068 and accompanying text (explaining that although U.S. GAAP and International Financial Reporting Standards (“IFRS”) Accounting Standards do not refer explicitly to climate-related matters, registrants have an obligation to consider material impacts when applying, for example, Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 330 *Inventory* (IAS 2 *Inventories*) and FASB ASC Topic 360 *Property, Plant, and Equipment* (IAS 36 *Impairment of Assets*)).

¹⁷⁵ 15 U.S.C. 77k.

¹⁷⁶ 15 U.S.C. 77l.

¹⁷⁷ See also 17 CFR 230.408 (in addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be

registrant's management, operations and financial condition, which can contribute to better risk and return assessments by investors. By contrast, the Final Rules are more apt to create information overload for investors, including through disclosure of immaterial information, while imposing significant new costs for registrants.

In light of existing disclosure obligations, the Final Rules serve insufficient additional purpose in informing investors about the material effects of climate-related matters. Indeed, in our view, the Final Rules are likely to result in the disclosure of immaterial information, at great cost to investors.

b. The Final Rules Prioritize the Effects of Climate-Related Matters Over Other Factors That May Materially Affect a Registrant's Operations and Financial Condition

In adopting the Final Rules, the Commission departed from its existing, generally principles-based approach to disclosure that for decades has elicited information about matters, including climate-related matters, that materially affect a registrant's operations or financial condition. In our view, a disclosure regime that prioritizes a single potential factor above any other that may affect the registrant and requires disclosure at the level of granularity called for by the Final Rules is inferior to the Commission's existing approach to disclosure that already applies with equal force to climate-related matters.

The Final Rules impose a myriad of highly prescriptive regulations that mandate granular disclosures focused exclusively on climate-related matters. For example, with respect to climate-related risks only, registrants under the Final Rules would need to consider and possibly disclose: (i) how a registrant's board oversees and is informed of climate risk, regardless of materiality;¹⁸³ (ii) how a registrant's management assesses and manages material climate risk;¹⁸⁴ (iii) which management positions manage climate risk and the associated expertise of the individuals serving in those roles;¹⁸⁵ (iv) the geographic location of physical climate risk;¹⁸⁶ and (v) how climate risks affect items like a registrant's products or services, suppliers, climate mitigation activities, and expenditures for research and development.¹⁸⁷

Similarly, the financial statement requirements prioritize the effects of severe weather events and other natural conditions by imposing relatively low percentage thresholds for when such effects must be separately reported in the notes to the financial statements. Specifically, the Final Rules require disclosure in the income statement of expenditures expensed as incurred and losses if such amounts (in the aggregate) equal or exceed one percent of the absolute value of income or loss before income tax expense or benefit (subject to a \$100,000 de minimis threshold)¹⁸⁸ and require disclosure of capitalized costs and charges recognized on the balance sheet if the absolute value of such amounts (in the aggregate) equals or exceeds one percent of the absolute value of stockholders' equity or deficit (subject to a \$500,000 de minimis threshold).¹⁸⁹ These examples, including the specified thresholds, make clear that the Final Rules cannot be justified as eliciting disclosure of *material* information. Given their exceedingly granular requirements, the Final Rules would inevitably result in the disclosure of *immaterial* information about climate-related matters.¹⁹⁰

Requiring such granular disclosures about a single type of risk, trend or event is at odds with a disclosure system that is intended to elicit information about the most significant factors affecting a registrant's operations and financial condition.¹⁹¹ The Commission's disclosure regime generally does not require this level of detailed disclosure for other factors affecting a registrant's business.¹⁹²

¹⁸⁸ 17 CFR 210.14–02(b)(1).

¹⁸⁹ 17 CFR 210.14–02(b)(2).

¹⁹⁰ This becomes evident when one considers that, prior to the adoption of the Final Rules, registrants already had an obligation to consider material impacts on the financial statements, including those that may be driven by climate-related matters. See, e.g., 2010 Guidance at 6295 n.69 (stating that “registrants must also consider any financial statement implications of climate change issues in accordance with applicable accounting standards, including [FASB] [ASC] Topic 450, Contingencies, and FASB [ASC] Topic 275, Risks and Uncertainties”).

¹⁹¹ Registrants face a litany of risks in their operations. However, as the Commission has previously stated, disclosure of risks should be focused on the “most significant” or “principal” factors that make a registrant's securities speculative or risky. See *Modernization of Regulation S-K, Items 101, 103, and 105*, Release No. 33–10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)].

¹⁹² While the Commission does require specialized disclosure for certain types of offerings and transaction structures and for particular industries such as oil and gas, these requirements are not focused on a specific type of risk, trend or event and, unlike the Final Rules, do not require virtually every registrant to devote time and resources to determining whether it may have a

Requiring such attention by registrants on climate-related matters, specifically, may lead to registrants devoting an inappropriate amount of attention to managing and reporting on such matters, which may not be among the most significant factors affecting the registrant's business. The Final Rules' misplaced focus, however, is not limited to impacts on a registrant's allocation of resources. The sheer volume of disclosures responsive to the Final Rules may hurt investors' abilities to ascertain relevant information about the other factors affecting a registrant because the climate-related disclosures could overshadow material disclosures about those other factors.

Moreover, as discussed in section III.C.3, the Commission's attempt to mitigate the burdensome granularity of the adopted requirements by adding materiality qualifiers throughout the Final Rules fails to adequately mitigate their distorting effects on registrant disclosures. Given the complexity of making the materiality determinations required by the Final Rules, many registrants may err on the side of over-disclosure, burdening both investors and registrants with an avalanche of climate-related information.

Thus, in our view, the Final Rules are inconsistent with and inferior to the Commission's long-standing, registrant-specific approach to disclosure of factors materially affecting a registrant's operations and financial condition and therefore should be rescinded.

c. Recent Developments Underscore Why a Flexible, Materiality-Based Approach Is Preferable

Recent efforts to scale back, set aside, or otherwise revise various climate reporting regimes at the international level further underscore why the Commission was misguided in adopting costly and prescriptive requirements built around shifting investor preferences and reporting trends. Investors are not monolithic and have differing risk appetites, investment strategies, and analytical methods—and in some cases non-financial interests—that affect their particular investment decisions. In designing a disclosure regime, the Commission should not seek to cater to the specific informational needs of every subset of investors about each emergent topic. Rather, as the

disclosure obligation under these regulations. See, e.g., 17 CFR 229.901 through 229.915 (roll-up transactions); 17 CFR 229.1601 through 229.1610 (special purpose acquisition companies); 17 CFR 229.1000 through 229.1016 (mergers and acquisitions); 17 CFR 229.1201 through 229.1208 (registrants engaged in oil and gas producing activities).

¹⁸³ 17 CFR 229.1501(a).

¹⁸⁴ 17 CFR 229.1501(b).

¹⁸⁵ 17 CFR 229.1501(b)(1).

¹⁸⁶ 17 CFR 229.1502(a)(1).

¹⁸⁷ 17 CFR 229.1502(b).

Supreme Court directed when delineating a materiality standard for the Federal securities laws,¹⁹³ the Commission should look to whether the *reasonable* investor would consider the information important in buying or selling securities—and as discussed above, the common interests of reasonable investors is in information regarding the financial performance of a company, the pricing of securities, and the prospect for economic and financial return from the disclosing company.¹⁹⁴ Moreover, investors generally are better served by regulatory requirements that can be adapted to registrants' specific circumstances. Such bespoke disclosures are more likely to provide material information than the one-size-fits-all disclosure approach of the Final Rules. If, over time, market forces lead to coalescence around certain disclosure practices, such practices are likely to be more responsive to the changing needs of investors than the top-down prescriptive approach of the Final Rules.

The soundness of these basic principles is well illustrated by the challenges faced by other climate-risk reporting regimes since the Final Rules were adopted. In adopting the Final Rules, the Commission observed several ongoing developments related to climate-risk reporting, which included, at the time, announcements by several jurisdictions to adopt, apply, or otherwise be informed by the International Sustainability Standards Board ("ISSB") standards.¹⁹⁵ The Adopting Release also highlighted the European Union's ("EU") adoption of the Corporate Sustainability Reporting Directive ("CSRD"), which requires certain large and listed companies and other entities, including non-EU entities, to report on sustainability-related issues in line with the European Sustainability Reporting Standards.¹⁹⁶ In taking note of such developments, the Commission acknowledged that these laws could reduce the compliance burden of the Final Rules to the extent

they impose similar requirements on registrants subject to them.¹⁹⁷

Since the adoption of the Final Rules only two years ago, there has been a noticeable effort to step back from these initiatives, calling into question the Commission's decision to follow them with its own highly prescriptive approach. These developments also undermine the assumption that the emergence of other reporting regimes would help to mitigate the significant costs of the Final Rules. For example, entities that set international standards for climate-risk reporting regimes, such as the ISSB and the EU, have revised their climate-related disclosure standards, having found them to be burdensome, overly complex, and/or duplicative. The ISSB has recently amended IFRS to "reduce complexity, the risk of duplicative reporting and the cost of applying specific greenhouse gas emissions disclosure requirements."¹⁹⁸ In February 2026, the EU adopted legislation revising the CSRD and the Corporate Sustainability Due Diligence Directive ("CSDDD") to simplify rules on sustainable finance reporting and decrease compliance burdens.¹⁹⁹ Specifically, the EU removed around 80% of previously covered companies from the scope of the CSRD, narrowed the scope of the CSDDD, and postponed the implementation timelines of both Directives, among other changes.²⁰⁰

These developments reinforce our determination that highly prescriptive disclosure requirements based on shifting investor preferences and reporting trends are inferior to a registrant-specific, materiality-based reporting regime focused on the

information a reasonable investor would consider important in making an investment decision.

2. The Final Rules Stray Well Beyond the Policy Concerns of the Federal Securities Laws

An additional policy reason for rescinding the Final Rules is that they do not respond to a gap in investor protection in the securities disclosure regime; rather, they concern the divisive and unsettled political and social issue of climate regulation. The Commission's role is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. It is not to regulate how public companies manage the effects of climate-related matters or to hijack the public company reporting regime to further social policies unrelated to the aims of the Federal securities laws. The Commission's disclosure requirements should inform investors about a registrant's operations and finances; it is not the province of the Commission to drive changes in those operations absent specific direction from Congress.²⁰¹ The Final Rules, with their granular and highly prescriptive requirements, inappropriately put a thumb on the scale with respect to registrants' decisions about whether and how to manage those effects. Indeed, under the Final Rules, even registrants for which the effects of climate-related matters may have little to no direct relevance to their particular facts and circumstances must consider specific aspects of climate-related matters on at least an annual basis to determine whether they are required to disclose anything. For example, in order to comply with Item 1505, most, if not all, LAFs and AFs that are not EGCs or SRCs will, to some extent, need to adopt controls and procedures to assess the materiality of their Scope 1 and 2 emissions and determine whether disclosure is required if they do not already have them in place.²⁰² Such conduct-altering effects demonstrate that the Final Rules are different in kind from existing disclosure obligations and stray well beyond what is required in order to inform and protect the reasonable investor.

Separate and apart from the question of whether the Commission has legal authority to promulgate the Final Rules discussed in section III.B, as a policy matter, the Commission does not view disclosure rules focused solely on

¹⁹³ See *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

¹⁹⁴ See *supra* section III.B.1.b.

¹⁹⁵ As noted in the Adopting Release, the IFRS Foundation formed the ISSB in November 2021, and in June 2023, the ISSB issued General Requirements for Disclosure of Sustainability-related Financial Information and Climate-related Disclosures ("IFRS S2"). Adopting Release at 21680. The Adopting Release also observed that several jurisdictions, including Australia, Brazil, Canada, Hong Kong, Japan, Malaysia, Nigeria, Singapore, and the United Kingdom, had announced plans to "adopt, apply, or otherwise be informed by the ISSB standards." *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ See *id.* at 21681.

¹⁹⁸ ISSB, Amendments to IFRS S2, IFRS Sustainability Disclosure Standard, *Amendments to Greenhouse Gas Emissions Disclosures* (Dec. 2025), <https://www.ifrs.org/content/dam/ifrs/publications/amendments/english/2025/issb-2025-1-amendments-ifrs-s2.pdf>. This IFRS Sustainability Disclosure Standard indicates that the climate-related disclosure requirements were amended in response to "challenges entities face in implementing IFRS S2 when applying specific greenhouse gas emissions disclosure requirements." *Id.*, paragraph BC80A.

¹⁹⁹ See Directive (EU) 2026/470 (Feb. 24, 2026); Directive (EU) 2025/794 (Apr. 14, 2025); European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, *Omnibus Package*, Newsletter (Apr. 1, 2026), available at https://finance.ec.europa.eu/en/news/omnibus-package-2025-04-01_en; Council of the European Union, *Council Signs Off Simplification of Sustainability Reporting and Due Diligence Requirements to Boost EU Competitiveness*, Press Release (Feb. 24, 2026), available at <https://www.consilium.europa.eu/en/press/press-releases/2026/02/24/council-signs-off-simplification-of-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/>.

²⁰⁰ See *supra* note 199.

²⁰¹ See *supra* section III.B.2 for further discussion of how the Final Rules intrude on State control over corporate governance by effectively regulating issuers' internal affairs.

²⁰² See Adopting Release at 21859.

climate-related matters as an appropriate exercise of agency rulemaking authority. The Commission has no interest in pushing the limits of its regulatory authority. Whether and to what extent companies should be generally required to disclose intrusive climate-related information is a matter of significant political and practical importance. Absent a clear statutory directive to the contrary, those matters belong to the People's elected representatives, not agency officials, to decide.

As discussed above, more than fifty years ago, the Commission stated that it does not have discretion under the Securities Act or the Exchange Act to require disclosure for the sole purpose of promoting social goals unrelated to those underlying these Acts.²⁰³ We agree with the sentiments in the Commission's 1975 statement and with the dissenting views expressed at the time of the Adopting Release by Commissioners Hester M. Peirce and Mark T. Uyeda.²⁰⁴ The Final Rules stray well beyond the policy concerns of the Federal securities laws and should be rescinded in their entirety.

3. The Final Rules Impose Significant Costs on Public Companies and Their Shareholders That Are Not Justified by the Informational Benefits They Provide to Some Investors

The significant costs of the Final Rules provide a separate, compelling reason to rescind them in their entirety. In imposing new disclosure obligations, the Commission should assess whether the benefits of the information required to be disclosed—considered from the perspective of the reasonable investor—justify the costs of providing the disclosure. The Final Rules fall well short of this standard. By eliminating the costly disclosure requirements in

the Final Rules, the proposed rescission would broadly benefit market efficiency, competition, and capital formation.

By the Commission's own estimation, the Final Rules will significantly increase the costs associated with public company disclosures. Indeed, the Commission estimated that depending on the registrant, annual compliance costs (averaged over the first ten years of compliance) could range from less than \$197,000 to over \$739,000.²⁰⁵ Updating these figures for inflation and aggregating them across all affected registrants, we estimate that rescinding the Final Rules could generate annualized savings of about \$4.9 billion per year over the next 10 years for all affected registrants.²⁰⁶

In the Adopting Release, the Commission acknowledged the significant additional burdens that the Final Rules will impose on registrants but nonetheless asserted that “those burdens are justified by the informational benefits of the disclosures to investors.”²⁰⁷ We disagree with the Commission's determination that such a significant imposition of costs is warranted in order to increase the disclosures across registrants about a single type of risk that some registrants may face. This conclusion is bolstered by the fact that, to the extent this risk is material, information about that risk should be elicited by existing disclosure requirements, as discussed in section III.C.1.a. Thus, any marginal or theoretical informational benefits to be derived from the Final Rules do not and cannot justify the substantial burdens they impose on public companies and their shareholders.

We recognize that some commenters to the Proposing Release indicated that investors have faced and may continue to face costs associated with obtaining or verifying information related to a registrant's climate-related risks or management thereof.²⁰⁸ However, we do not agree that it is appropriate to burden all shareholders of almost all public companies with the high costs of the Final Rules in order to subsidize the informational demands of certain investors who choose to focus their investment strategies on climate-related matters or who have interests other than the pursuit of a financial return that are

driving their informational demands. There are multitudes of investment strategies, and investors bear all sorts of costs to search for and verify information based on their chosen strategy. They should be free to do so. Similarly, individual registrants may want to attract climate-focused investors and choose to provide additional information. They should be free to do so as well. But the entire market should not be forced to bear the costs of providing more particularized information than what the reasonable investor needs for an investment decision. Market-based solutions to demands for particular information are more appropriate. Therefore, notwithstanding that some investors will not receive some of the informational benefits described in the Adopting Release,²⁰⁹ we have determined that the proposed rescission is the appropriate course of action for a disclosure regime focused on providing material information to reasonable investors.

Furthermore, despite the Commission's repeated assertions in the Adopting Release, the layering of materiality qualifiers throughout the Final Rules fails to adequately mitigate the overall burdens imposed on registrants in the context of the Final Rules' highly prescriptive disclosure requirements.²¹⁰ For example, the Final Rules require certain registrants to disclose Scope 1 and Scope 2 GHG emissions, *if material*.²¹¹ The Adopting Release estimated that the compliance costs to a registrant for these disclosures would be \$151,000 in the first year of compliance and \$67,000 annually in subsequent years.²¹² Moreover, as the Adopting Release acknowledges, the costs of assessing and monitoring the materiality of a registrant's emission “could be significant” even in situations where the registrant ultimately determines that they do not need to provide disclosure.²¹³ The Adopting Release did not separately quantify

²⁰³ Environmental and Social Disclosure Release at 51660; see *supra* section III.B.2.

²⁰⁴ Commissioner Hester Peirce dissented from the adoption of the Final Rules, saying that they promise “to spam investors with details about the Commission's pet topic of the day—climate.” Comm'r Hester M. Peirce, *Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 6, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-mandatory-climate-risk-disclosures-030624>. Commissioner Mark Uyeda made similar points, saying that the Final Rules are “climate regulation promulgated under the Commission's seal” and “the culmination of efforts by various interests to hijack and use the Federal securities laws for their climate-related goals.” Comm'r Mark T. Uyeda, *A Climate Regulation under the Commission's Seal: Dissenting Statement on The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 6, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-mandatory-climate-risk-disclosures-030624>.

²⁰⁵ Adopting Release at 21875.

²⁰⁶ See *infra* section IV.C.3.

²⁰⁷ Adopting Release at 21671.

²⁰⁸ See *id.* at 21678, n.113; see also *id.* at 21853 (“Commenters noted that with the limitations to the currently available climate-related disclosures, extensive costs in the form of data gathering, research and analysis are needed to process them and to fill data gaps where possible in making investment decisions.” (citation omitted)).

²⁰⁹ Section IV.C.2.a. of the Adopting Release identifies several benefits of the Final Rules, which are discussed in more detail below.

²¹⁰ Adopting Release at 21698 (explaining that the Commission added an explicit materiality qualifier to Item 1502(b) to help address concerns that the proposed rule could be “unduly burdensome for registrants”). See *id.* at 21700–01 (stating that subjecting Item 1502(d) to “materiality” would “help to mitigate the compliance burden”).

²¹¹ 17 CFR 229.1505(a)(1). As a tacit acknowledgement of the difficulty of making materiality determinations in the context of emissions metrics, the Adopting Release provided guidance and several detailed examples of when GHG emissions could be considered “material.” See Adopting Release at 21733.

²¹² See Adopting Release at 21875.

²¹³ *Id.* at 21733.

these particular costs, which would arise from the efforts of a registrant to measure its Scope 1 and Scope 2 emissions, including establishing organizational boundaries and operational boundaries and adopting a specific reporting protocol or standard.²¹⁴ Only then, after it has invested potentially significant resources to perform this exercise, can a registrant make a determination about whether such metrics are material.²¹⁵ Thus, the Final Rules also require a complicated analysis even to determine whether disclosure is required,²¹⁶ saddling every covered registrant with the costs of collecting the necessary information and calculating emissions.

The difficulty of making materiality determinations under the Final Rules is further compounded by the complex and overlapping nature of the required disclosures. For example, the Final Rules would require registrants to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition.²¹⁷ The Commission asserted that investors "need detailed information about a registrant's climate-related targets or goals in order to understand and assess the registrant's transition risk strategy and how the registrant is managing the material impacts of its identified climate-related risks."²¹⁸

The Commission adopted this requirement notwithstanding the fact that, elsewhere in the Final Rules, a registrant is required to describe any

climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition.²¹⁹ In addition, if a registrant has adopted a transition plan to manage a material transition risk, it must describe the plan and update its annual report disclosure about the transition plan each fiscal year by describing any actions taken during the year under the plan.²²⁰ The use of materiality qualifiers in such a complex, interconnected, and highly prescriptive set of disclosure requirements does not adequately mitigate the overall burdens of producing those disclosures.

Because the error cost of miscalculating a disclosure obligation includes a potential enforcement action by the Commission or a securities fraud class action, registrants are left with the difficult choice of either making their best judgments about materiality and risking being subject to liability for coming to the wrong conclusion or disclosing information that may not be material in an effort to avoid liability. Investors do not benefit if "management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decisionmaking."²²¹

As these examples show, the Commission's use of materiality qualifiers does not adequately mitigate the burdens of the climate-related disclosure requirements. Moreover, in the context of the complex and overlapping nature of the Final Rules' disclosure obligations, such materiality qualifiers do not meaningfully limit the information that a registrant feels compelled to disclose, burying investors in disclosures of limited value. Indeed, the numerous materiality determinations required by the Final Rules merely mask how the rules reached well beyond what a reasonable investor would consider important in buying or selling securities.

We similarly disagree that the informational benefits of the Final Rules justify the significant costs they would impose. The Adopting Release asserts several benefits of the Final Rules, such as: (1) that the information will enable investors to better assess material risks in climate-related reporting and facilitate comparisons across firms and over time; (2) the information is relevant

to ensuring that the risk is correctly priced into the securities; (3) the use of a standardized disclosure framework will "mitigate agency problems arising from registrants being able to selectively disclose . . . information, which reduces transparency and impairs investors' ability to effectively assess the potential financial impacts of a registrant's climate-related risks"; and (4) providing "better information" will reduce information asymmetries between managers and investors as well as amongst investors, which "will improve liquidity and reduce transaction costs for investors . . . , and may lower firms' cost of capital."²²² Although we acknowledge that the Commission may consider these kinds of benefits when adopting new disclosure rules, we disagree that these policy goals should be pursued at such significant costs.

As discussed in section III.B.2, any assertions about the benefits of the consistency and comparability of the disclosures elicited by the Final Rules should be discounted because those benefits are substantially compromised by the inconsistent, variable, and often speculative assumptions necessary to make many of those disclosures. Also, it is far from clear that these "standardized" disclosures would serve the informational needs of investors and the marketplace better than existing principles-based requirements that allow for more particularized insight into a registrant's management, operations, and financial condition.

In crafting a fit-for-purpose disclosure regime, the Commission should consider not only the informational benefits to be derived from the required disclosures but also the costs to produce those disclosures, which are ultimately borne by investors themselves. In doing so, the Commission should take into account whether the required disclosures benefit existing and potential investors in most companies, or only those with particularized investment strategies or informational needs. In our evaluation, as we assess these factors, any informational benefits to be derived from the Final Rules cannot justify the significant costs they would impose on public companies and their shareholders.

²¹⁴ *Id.* at 21875 ("While commenters provided estimates of the overall costs of measuring and assessing GHG emissions and making disclosure under [the Task Force on Climate-Related Disclosures ("TCFD")] disclosure frameworks, they did not provide a level of detail that would enable us to reliably disaggregate the materiality determination from the costs of disclosure more broadly.").

²¹⁵ *Id.* ("While [the Commission has] not provided a standalone cost estimate of making such materiality determinations, [the Commission's] estimates of the costs of governance disclosure, disclosure regarding the impacts of climate-related risks on strategy, business model, and outlook, and risk management disclosure begin with TCFD disclosure as a starting point. Thus, to the extent that a materiality or similar assessment is included in the TCFD disclosure, this cost is reflected in the Commission's compliance cost estimates with respect to [these] disclosure items." (citation omitted)).

²¹⁶ *Id.* at 21733–21734. In either scenario, a registrant must first assume the burden of calculating its Scope 1 and 2 emissions in order to determine whether such emissions fit within the Commission's vague notion of materiality in this context, or are "reasonably likely," to be material at some future date. *Id.*

²¹⁷ See 17 CFR 229.1504(a).

²¹⁸ Adopting Release at 21723.

²¹⁹ See 17 CFR 229.1502(a).

²²⁰ See 17 CFR 229.1502(e)(1).

²²¹ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448–49 (1976).

²²² See Adopting Release, section IV.C.1.a; *id.* at 21849.

4. The High Costs of the Final Rules Are at Odds With the Commission's Policy Objectives of Facilitating Capital Formation and Promoting Public Company Status

The Commission's current agenda is focused on restoring the vigor of public securities markets and encouraging companies to go public and stay public.²²³ The number of public companies has diminished significantly since 2000,²²⁴ with some observers pointing to the cost of public company disclosure as one deterrent.²²⁵

As discussed in section III.C.3, the Final Rules add substantially to the cost and complexity of public disclosures by issuing and reporting companies. If the Final Rules were to go into effect, they would be in direct contravention of the Commission's current policy objectives of promoting public company status and facilitating capital formation.

The Final Rules increase the overall costs associated with accessing and participating in capital markets. This increase in costs has a deterrent effect on such participation, thereby reducing market liquidity and depth, which ultimately hinders, rather than facilitates, capital formation. Costly regulation can also divert registrants' resources that could otherwise be spent on production, investment, or

innovation. In addition, it can reduce the incentives of registrants to implement otherwise efficient business strategies, transition plans, or goals because of direct and indirect costs of disclosing them. Such disclosure requirements may disproportionately affect smaller firms with resource constraints and limit their ability to grow and compete.

Regulatory costs can also influence the size of the public markets, if companies decide to exit the markets or remain privately held to avoid regulatory costs. This avoidance strategy widens the transparency gap between public and private companies, negatively affecting competition between public and private companies as well as capital markets' information efficiency. Depending on market conditions and other factors, registrants may also pass on their compliance costs to third parties, such as consumers and workers. Beyond the desire to avoid direct compliance costs, some companies may avoid going public if they fear they will have to provide disclosure about an array of socially and politically contentious issues. Such effects, taken together, reduce overall productivity, constrain growth opportunities, and depress economic efficiency, thus reducing future cash flows, earnings expectations, and shareholder returns.

The high costs imposed by the Final Rules and related adverse effects undermine the Commission's goals of facilitating capital formation and improving the accessibility and attractiveness of public company status. The Commission declines to impose such burdens on registrants and therefore proposes to rescind the Final Rules in their entirety.

Request for Comment

(1) Should we rescind the Final Rules in their entirety as proposed? Why or why not?

(2) Are there aspects of the Final Rules that remain within the Commission's statutory authority and should be retained? If so, how would these items of disclosure be able to operate sensibly without the rescinded portions of the Final Rules?

(3) Are there alternatives to outright rescission that we should consider? For example, should we amend the Final Rules so that they apply to a smaller subset of registrants or in more limited circumstances? Alternatively, should we propose to replace the Final Rules with less prescriptive and less costly disclosures about climate-related matters? If so, how would such disclosures improve upon the

information already elicited by existing disclosure obligations? What information about climate-related matters does a reasonable investor need to make informed investment decisions?

(4) Does the proposed rescission negatively affect any reasonable reliance interests that market participants may have had in the operation of the Final Rules, notwithstanding that the rules were stayed prior to effectiveness? Have any costs been incurred in preparing to comply with the Final Rules, even though the Final Rules have been stayed? If so, please explain why and describe the type and magnitude of those costs.

(5) Do existing disclosure requirements serve to elicit adequate disclosure about climate-related matters, when material to a specific registrant? Why or why not? Should we revise the 2010 Guidance to provide updated guidance about how existing disclosure obligations may elicit information about climate-related matters?

(6) Have recent developments in climate reporting practices affected the rationale for the Final Rules? If so, how?

(7) If the Final Rules were to go into effect, to what extent would they impact firm decisions about whether to become or remain a public company?

IV. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Securities Act section 2(b) and Exchange Act section 3(f) require us, when engaging in rulemaking where the Commission is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.²²⁶ In addition, Exchange Act section 23(a)(2) requires the Commission to consider the effects on competition of any rules that the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²²⁷ We are likewise sensitive to the economic effects of rescinding our existing rules, which may involve the reconsideration of the benefits, costs, and impacts on efficiency, competition, and capital formation that were assessed when adopting those rules.

²²⁶ See 15 U.S.C. 77b(b); 17 U.S.C. 78c(f).

²²⁷ See 17 U.S.C. 78w(a)(2).

²²³ See, e.g., Chairman Paul S. Atkins, *Revitalizing America's Markets at 250* (Dec. 2, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250>; Chairman Paul S. Atkins, *Statement on Reforming Regulation S-K* (Jan. 13, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>. We also note that facilitating capital formation is one of the three prongs of the Commission's tripartite mission and a factor that the Commission must consider when making public interest determinations in the context of rulemaking. See *supra* note 49 and accompanying text.

²²⁴ See U.S. Securities and Exchange Commission Staff, *SEC Statistics & Data Visualizations: Reporting Issuers, Number of Reporting Issuers by Calendar Year (2004–2024)* (last updated Aug. 12, 2025), available at <https://www.sec.gov/data-research/statistics-data-visualizations/reporting-issuers/number-reporting-issuers-calendar-year-2004-2024> (indicating that the number of reporting issuers has decreased from 9,656 in 2004 to 7,902 in 2024, which represents an approximately 18.2% decline); EY, *The Declining Number of Public Companies and Mandatory Reporting Requirements* (June 2022), available at <https://accf.org/wp-content/uploads/2022/06/EY-ACCF-The-declining-number-of-public-companies-and-mandatory-reporting-requirements-June-2022.pdf> (considering the 2000–2019 period and estimating that “[t]here were at least 800 fewer US companies traded on major US exchanges at the end of 2019 because of mandatory reporting requirements.”).

²²⁵ See, e.g., Michael Dambra, Laura Casares Field & Matthew Gustafson, *The JOBS Act and IPO Volume: Evidence that Disclosure Costs Affect the IPO Decision*, 116 J. Fin. Econ. 121 (2015), which suggests regulatory burden is an important consideration in the going-public decision.

We are proposing to rescind the Final Rules in their entirety for the reasons articulated in section III. The proposed rescission would significantly reduce regulatory compliance costs for registrants affected by the Final Rules.

We consider below the potential benefits and costs of the proposed rescission and the likely effects of rescission on efficiency, competition, and capital formation. Many of the benefits and costs are impracticable to quantify or estimate with any degree of certainty. Where we are unable to quantify the economic effects of the proposed rescission, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits and costs of the proposed rescission, and the potential impacts of the proposed rescission on efficiency, competition, and capital formation.

B. Economic Baseline

The baseline against which the benefits and costs and the effects on efficiency, competition, and capital formation of the proposed rescission are measured consists of current requirements for climate-related disclosures and current market practices that relate to such disclosures.²²⁸ For purposes of defining the baseline for this Economic Analysis, we treat the Final Rules as if they are in effect even though the Commission has stayed their implementation. Below we describe the parties who are likely to be affected by the Final Rules and therefore the proposed rescission, as well as existing rules or laws that require or elicit climate-related disclosures and the current market practice related to reporting on climate-related matters.

1. Affected Parties

The proposed rescission of the Final Rules would apply to registrants filing Securities Act and Exchange Act registration statements as well as Exchange Act annual and quarterly reports. The Adopting Release identifies

several parties likely to be affected by the Final Rules, and they would be the same parties affected by a rescission of the Final Rules. The parties likely to be affected are: registrants subject to the disclosure requirements imposed by the Final Rules, as detailed below; users of information about climate-related matters, such as investors, analysts, and other market participants; and third-party service providers who may collect, review, and process this information, including assurance providers and ratings providers.²²⁹

In particular, the Final Rules require both domestic registrants and foreign private issuers affected by the Final Rules to disclose highly granular information on climate-related matters in a standardized and centralized format in Commission filings. The affected parties that directly benefit from the Final Rules include specific subgroups: those investors who would use this information as part of their particular investment strategies; financial intermediaries who act on behalf of investors (e.g., asset managers, investment advisers, pension fund managers) to the extent they incorporate climate-related risks when constructing investment portfolios and evaluating registrants' risk profiles; and stakeholders who would use the expanded climate disclosures for advocacy or political purposes.²³⁰ The affected parties that incur direct costs from the Final Rules include all aforementioned registrants and by extension their shareholders—broadly speaking all investors in these registrants, which is a class of investors broader than the subgroup of investors directly benefiting from the Final Rules.

The Final Rules affect both domestic registrants and foreign private issuers filing registration statements and periodic reports with the Commission, but they would not apply to Canadian registrants that use the Multijurisdictional Disclosure System and file their Exchange Act registration statements and annual reports on Form 40-F.²³¹ We estimate that during

calendar year 2025, excluding asset-backed securities issuers, there were 6,766 registrants that filed on domestic forms and on Form 20-F.²³² We also estimate that 2,348 of these registrants were LAFs, 541 were AFs that are not SRCs or EGCs (non-exempt AFs) and 3,877 were all other registrants (AFs that were SRCs or EGCs, and non-accelerated filers ("NAFs")).

Out of these registrants, there were approximately 5,703 registrants that filed on domestic forms, and approximately 1,063 foreign private issuers that filed on Form 20-F. Among registrants that filed on domestic forms, approximately 36 percent were LAFs, 7 percent were non-exempt AFs, and 56 percent were AFs that were SRCs or EGCs, and NAFs. In addition, we estimate that among the foreign private issuers that filed on Form 20-F approximately 27 percent were LAFs, 11 percent were non-exempt AFs, and 62 percent were AFs that were SRCs or EGCs, and NAFs.

The Final Rules would also require disclosures in registered offerings, except with respect to business combination transactions involving a company not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. In many cases, registrants would be able to meet these requirements by incorporating by reference from their periodic reports. Registrants that have not previously filed periodic reports, such as companies conducting initial public offerings, would not have previously filed such reports to incorporate by reference. In 2025, there were approximately 810 such companies that conducted registered offerings on Form S-1 or F-1.²³³

Index Key ("CIK"), that filed a unique Form 10-K, Form 10-KT, Form 20-F, or amendments to these forms, during calendar year 2025, excluding asset-backed securities issuers. The estimates for SRCs, EGCs, AFs, LAFs, and NAFs are based on data obtained by Commission staff using a computer program that analyzes Commission XBRL filings and manual review of filings by Commission staff.

²³² There were 15 issuers with filer status missing among Form 10-K filers and one issuer with filer status missing among Form 20-F filers in 2025. These registrants are not included into the total registrants count.

²³³ This estimate was calculated by searching EDGAR for all registrants who filed a Form S-1 or F-1 in the year 2025. If multiple registration statements were filed in 2025 by the same registrant, the earliest was used. This list of registrants was then compared to a list of periodic reports (Forms 10-K, 10-Q, 20-F, and 8-K) filed on EDGAR since 2018. Approximately 810 registrants filed registration statements in 2025 that had not previously filed a Form 10-K, 10-Q, 20-F, or 8-K. Of those, approximately 340 did not subsequently file a Form 10-K, 10-Q, 20-F, or 8-K in 2025 or in the first calendar quarter of 2026, for example by operation of 17 CFR 240.12h-5 or 12h-7, indicating

²²⁸ See, e.g., *Nasdaq Stock Mkt. LLC v. SEC*, 34 F.4th 1105, 1111–14 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. See SEC Staff, *Current Guidance on Economic Analysis in SEC Rulemakings* (Mar. 16, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf ("The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action."); *id.* at 7 ("The baseline includes both the economic attributes of the relevant market and the existing regulatory structure").

²²⁹ See Adopting Release, section IV.A.1

²³⁰ See Adopting Release, at 21683 n.172. Such purposes could include promoting particular conceptions of acceptable corporate behavior, compelling corporations and officials to regularly speak on climate-related issues, or initiating progressively broader or more frequent disclosure demands that could significantly increase the burden of making disclosures. See, e.g., Hans B. Christensen, Luzi Hail & Christian Leuz, *Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review*, 26 Rev. Acct. Stud. 1176 (2021).

²³¹ The number of domestic registrants and foreign private issuers that would be affected by the Final Rules, if they go into effect, is estimated as the number of companies, identified by Central

2. Current Regulatory Framework

a. Commission Disclosure Requirements

1. 2010 Guidance and Existing Rules

Apart from the Final Rules, existing Commission disclosure requirements may, depending on the circumstances, require or elicit disclosure of certain climate-related matters.²³⁴ The 2010 Guidance emphasizes that certain existing disclosure requirements in Regulation S-K and Regulation S-X may require disclosure about climate-related matters.²³⁵ With respect to the most pertinent non-financial statement disclosure rules, we note that: Item 101 of Regulation S-K (Description of business) expressly requires disclosure regarding certain material costs and effects of compliance with environmental regulations;²³⁶ Item 103 of Regulation S-K (Legal proceedings) requires disclosure regarding any material pending legal proceeding to which a registrant or any of its subsidiaries is a party or of which any of their property is the subject; Item 105 of Regulation S-K (Risk factors) requires, where appropriate, a discussion of the material factors that make an investment in a registrant or an offering speculative or risky;²³⁷ and Item 303 of Regulation S-K (management's discussion and analysis of financial condition and results of operation) requires material historical and prospective narrative disclosure to

that they may incur lower or zero cost of ongoing compliance because they are exempt from ongoing Exchange Act reporting obligations.

²³⁴ See *supra* section III.C.1.a for discussion of how existing disclosure obligations already elicit disclosure of material climate-related matters. The Commission considers the current disclosure of climate-related matters as part of the baseline against which the benefits and costs of the proposed rescission are measured.

²³⁵ For example, the 2010 Guidance discusses disclosure obligations under 17 CFR 229.101, 17 CFR 229.103, and 17 CFR 229.303. For an overview of how climate change matters may be required to be disclosed under existing rules, primarily Regulation S-K and Regulation S-X, see 2010 Guidance, section III.

²³⁶ 17 CFR 229.101(c)(2)(i) (for non-SRCs), (h)(4)(xi) (for SRCs). Item 101 of Regulation S-K was amended in 2020. When the 2010 Guidance was issued, Item 101(c)(1)(xii) required disclosure of the material effects of compliance with environmental laws, and thereafter, in 2020, the item was amended to reference the material effects of compliance with all material government regulations, not just environmental laws. See *Modernization of Regulation S-K, Items 101, 103, and 105*, Release No. 33-10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)].

²³⁷ 17 CFR 229.105. Risk factors disclosure was addressed in Item 503(c) of Regulation S-K at the time of the 2010 Guidance. See 17 CFR 229.503(c) (2009). This rule provision was revised and relocated to Item 105 of Regulation S-K in 2019. See *FAST Act Modernization and Simplification of Regulation S-K*, Release No. 33-10618 (Mar. 20, 2019) [84 FR 12674 (Apr. 2, 2019)].

help investors assess the financial condition and results of operations of a registrant.²³⁸ Registrants are currently required to provide disclosure about climate-related matters to the extent they are responsive to existing disclosure requirements, such as those highlighted in the 2010 Guidance.

2. The Final Rules

In March 2024, the Commission adopted the Final Rules. The Final Rules require registrants to disclose certain climate-related information in their registration statements and annual reports.²³⁹ Among other things, the Final Rules require public companies to disclose detailed information about the impact and management of climate-related risks, GHG emissions, scenario analysis, internal carbon prices and certain climate-related financial statement effects.²⁴⁰ As discussed in section II, the Final Rules have not gone into effect.

3. Recently Proposed Rules

The Commission recently proposed amendments to streamline filer statuses for Exchange Act reporting companies into two primary categories: LAFs and NAFs.²⁴¹ The proposed amendments would, among other things, raise the public float threshold and seasoning requirements for qualification as a LAF and extend certain existing accommodations and scaled disclosures currently reserved for SRCs, EGCs and/or NAFs to all NAFs under the proposed amendments, while continuing to require compliance with non-scaled disclosure from LAFs. Because the Final Rules also scaled disclosures based on filer status, if adopted, the proposed amendments in the Filer Status

²³⁸ 17 CFR 229.303. The 2010 Guidance also discusses corollary provisions applicable to foreign private issuers not filing on domestic forms. The 2010 Guidance further states that, in addition to the Regulation S-K items discussed therein, registrants must also consider any financial statement implications of climate-related matters in accordance with applicable accounting standards, including FASB ASC Topic 450, Contingencies, and FASB ASC Topic 275, Risks and Uncertainties. Finally, the 2010 Guidance notes the applicability of Securities Act Rule 408 and Exchange Act Rule 12b-20, which require a registrant to disclose, in addition to the information expressly required to be included in a statement or report, "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading." 17 CFR 230.408(a); 17 CFR 240.12b-20.

²³⁹ See *supra* section II for a discussion of the requirements of the Final Rules.

²⁴⁰ *Id.*

²⁴¹ See *Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies*, Release No. 33-11419 (May 19, 2026) [91 FR 30086 (May 21, 2026)] ("Filer Status Proposing Release").

Proposing Release would affect which companies are subject to which requirements under the Final Rules.

b. Existing State and Other Federal Laws

Existing State and other Federal laws require certain climate-related disclosures and reporting. As a result of these reporting requirements, some registrants subject to the Final Rules may already be disclosing certain information about climate-related matters or may be developing processes and systems to track and disclose such matters.

For instance, within the insurance industry, there are requirements for mandatory climate risk disclosures for any domestic insurers that write more than \$100 million in annual net written premium.²⁴² For reporting year 2023, 1,700 companies provided climate risk disclosures in response to the NAIC survey.²⁴³

Federal and State reporting requirements related to GHG emissions also exist.²⁴⁴ Since the adoption of the Final Rules, officials have proposed amendments to eliminate or reduce the climate-related disclosure obligations of some of these programs, or these disclosure obligations have been challenged in courts. Notably, at the Federal level, with respect to the Greenhouse Gas Reporting Program, which requires that each facility that directly emits more than 25,000 metric tons of CO₂e per year to report its direct emissions to the EPA,²⁴⁵ the EPA proposed amendments in September

²⁴² See Adopting Release, section IV.A.3; see also Nat'l Ass'n of Ins. Comm'rs ("NAIC"), *Redesigned State Climate Risk Disclosure Survey* (adopted Apr. 6, 2022), available at <https://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ClimateSurvey/upload/2022RevisedStateClimateRiskSurvey.pdf> (describing the scope and intent of the climate risk disclosure survey and providing guidance on the applicability of the survey). As of 2024, 24 States and the District of Columbia require these domestic insurers to disclose their climate-related risk assessment and strategy via the NAIC Climate Risk Disclosure Survey. The 24 States are Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin. Cal. Dep't of Ins., NAIC Climate Risk Disclosure Survey Results—Home, available at https://interactive.web.insurance.ca.gov/apex_extprd/f?p=201:1 (last visited April 6, 2026).

²⁴³ This estimate is based on Form 20-F and Form 10-K filings in calendar year 2023 and 2023 NAIC survey results. Cal. Dep't of Ins., Climate Risk Disclosure Survey Database, available at https://interactive.web.insurance.ca.gov/apex_extprd/f?p=201:1 (last visited March 13, 2026).

²⁴⁴ See Adopting Release, section IV.A.3. for a discussion of Federal and State GHG reporting programs that were in existence at the time of the adoption of the Final Rules.

²⁴⁵ See 40 CFR part 98.

2025 to largely end the reporting program.²⁴⁶ The proposed amendments, if adopted would eliminate program obligations to disclose GHG emissions for most source categories (e.g., power plants, cement and steel) in addition to delaying the requirement to report GHG emissions for the remaining source categories until 2034.²⁴⁷

In the Adopting Release, the Commission also discussed the climate-related reporting requirements set forth in California's Climate-Related Financial Risk Act ("Senate Bill 261") and Climate Corporate Data Accountability Act ("Senate Bill 253").²⁴⁸ In November 2025, the Ninth Circuit granted a motion to enjoin enforcement of Senate Bill 261 and denied a motion to enjoin enforcement of Senate Bill 253.²⁴⁹ As a result, although litigation remains ongoing, companies subject to Senate Bill 253 will be required to disclose their Scope 1 and Scope 2 emissions beginning in 2026²⁵⁰ and their Scope 3 emissions beginning in 2027.²⁵¹ But companies subject to Senate Bill 261 will not be required to begin reporting their climate-related financial risks and measures in 2026 as Senate Bill 261 originally required unless the litigation concludes and the Ninth Circuit upholds Senate Bill 261.²⁵²

c. International Disclosure Requirements

Registrants that are listed or operate in jurisdictions outside the United

States may also be subject to those jurisdictions' disclosure and reporting requirements. As a result, some registrants subject to the Final Rules may have in place, or be developing, processes and systems to track and disclose information about climate-related matters. For example, in the Adopting Release, the Commission discussed the TCFD's framework for climate-related financial reporting and the plan for several jurisdictions to support or adopt climate disclosure requirements consistent with the TCFD recommendations.²⁵³

In the Adopting Release, the Commission further discussed the ISSB's climate-related disclosure standards and the fact that several jurisdictions had announced plans to adopt, apply, or otherwise be informed by the ISSB standards.²⁵⁴ In December 2025, the ISSB issued amendments to IFRS S2 to, among other things, reduce complexity, the risk of duplicative reporting and the cost of applying specific GHG emissions disclosure requirements by clarifying the Scope 3 reporting requirements and excluding the requirement to disclose certain emissions.²⁵⁵ The ISSB stated that the amendments were aimed to reduce complexity, the risk of duplicative reporting and the cost of applying specific GHG emissions disclosure requirements in IFRS S2, while not significantly reducing the usefulness of information for users of general purpose financial reports.²⁵⁶

In the Adopting Release, the Commission also discussed the reporting requirements for certain companies to disclose their GHG emissions under the CSRD.²⁵⁷ In February 2026, the EU adopted legislation revising the CSRD and CSDDD to, among other things, narrow the scope of covered companies under the CSRD and postpone the implementation timelines of relevant Directives.²⁵⁸

3. Current Market Practices

This section updates staff analyses in the Adopting Release that described then current market practices with regard to several types of climate-related disclosures, including those made in Commission filings and in other contexts. These practices display variation over time and across several dimensions, such as by disclosure type,

by status as an LAF, AF, NAF, EGC and/or SRC ("filer status"), by industry, or with respect to their use of third-party assurance. In addition, this section describes recent changes in selected third-party climate disclosure frameworks that may influence the disclosures described above.

a. Climate-Related Disclosures in Commission Filings

In the absence of the Final Rules' implementation, the SEC's existing disclosure obligations elicit disclosure about material climate-related matters. Registrants may also voluntarily choose to disclose climate-related information. To help inform on current disclosure practices, Commission staff updated the analysis included in the Adopting Release regarding climate-related disclosures in Commission filings.²⁵⁹

Commission staff reviewed 87,865 annual reports (Forms 10-K and 20-F) submitted from January 1, 2016, to December 31, 2025, to determine the number containing any of these climate-related keywords: "climate change," "climate risk," "global warming," "greenhouse gas(es)" or "GHG emission(s)."²⁶⁰ As in the Adopting Release, the staff assumed that the presence of any of these climate-related keywords in any part of the annual report indicates disclosure of some climate-related information, but this keyword analysis is not meant to capture the substantive depth or quality of climate-related disclosure. This analysis also does not purport to identify causality, such as the extent to which observed market practices result from specific market events, policies, or regulations (including the Commission's development and adoption of the Final Rules). We include this analysis because it is a useful descriptive statistic for characterizing current market practices and is consistent with prior Commission analysis in the Adopting Release. This analysis, which is empirical evidence on existing disclosure practices under the 2010 Guidance, helps provide a more complete picture of the current baseline for the purpose of evaluating the incremental effects of the proposed rescission.

Table 1 summarizes the incidence of any of the aforementioned climate-

²⁵⁹ See Adopting Release, section IV.A.5.a.

²⁶⁰ This section of the release refers to these keywords collectively as "climate-related keywords." The selection of climate-related keywords is a combination of keywords used in the Final Rules and those identified in Christine Chou, Robin Clark & Steven O. Kimbrough, *What Do Firms Say in Reporting on Impacts of Climate Change? An Approach to Monitoring ESG Actions and Environmental Policy*, 30 Corp. Soc. Resp. & Env't Mgmt. 2671 (2023).

²⁴⁶ See EPA, *Reconsideration of the Greenhouse Gas Reporting Rule* [90 FR 44591 (Sept. 16, 2025)]; see also EPA, *EPA Releases Proposal to End the Burdensome, Costly Greenhouse Gas Reporting Program, Saving up to \$2.4 Billion* (Sept. 12, 2025), available at <https://www.epa.gov/newsreleases/epa-releases-proposal-end-burdensome-costly-greenhouse-gas-reporting-program-saving-24> (overview of proposed amendments).

²⁴⁷ *Id.*

²⁴⁸ See Adopting Release at 21681.

²⁴⁹ See Order, *U.S. Chamber of Com. v. Randolph*, No. 25-5327, 2025 U.S. App. LEXIS 32205 (9th Cir. Nov. 18, 2025).

²⁵⁰ The draft regulations for Senate Bill 253 indicate that the reporting deadline of Aug. 10, 2026, remains unchanged for reporting Scope 1 and Scope 2 emissions. See Cal. Air Res. Bd., Article 6: California Climate Disclosures (Dec. 2025), available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/sb253-261/reg%20text.pdf>.

²⁵¹ See SB-253, Climate Corporate Data Accountability Act, 2023-2024 Senate, Reg. Sess. (Cal. 2023), available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20230240SB253.

²⁵² See *supra* note 249; see also Lisa Rushton, Womble Bond Dickinson (US) LLP, *California's Climate Risk Disclosure Law Paused. What SB 261's Injunction Means for Businesses* (Dec. 9, 2025), available at <https://natlawreview.com/article/californias-climate-risk-disclosure-law-paused-what-sb-261s-injunction-means> (discussing the legal landscape following the Ninth Circuit's injunction).

²⁵³ See Adopting Release, section IV.A.4.

²⁵⁴ See Adopting Release, section II.A.3.

²⁵⁵ See *supra* notes 195 and 198.

²⁵⁶ See *supra* note 198.

²⁵⁷ See Adopting Release, section IV.A.4.

²⁵⁸ See *supra* note 199.

related keywords in Forms 10–K and 20–F filed from January 1, 2024, to December 31, 2025. The data show that

about 47 percent of all filings submitted in 2024 and 2025 contained at least one climate-related keyword. The

proportion is greater, about 52 percent, among foreign private issuers filing on Form 20–F.²⁶¹

Table 1. 10-K and 20-F Filings with Climate-Related Keywords by Form Type, 2024-2025

Form	Number of Filings with any Keyword	Total Number of Filings	Percent of Filings with any Keyword
10-K	6,836	14,660	47%
20-F	1,215	2,347	52%
Total	8,051	17,007	47%

This table presents the analysis of annual filings submitted to the Commission between January 1, 2024, and December 31, 2025. For each form type, the table shows the number of filings containing any of the climate-related keywords.

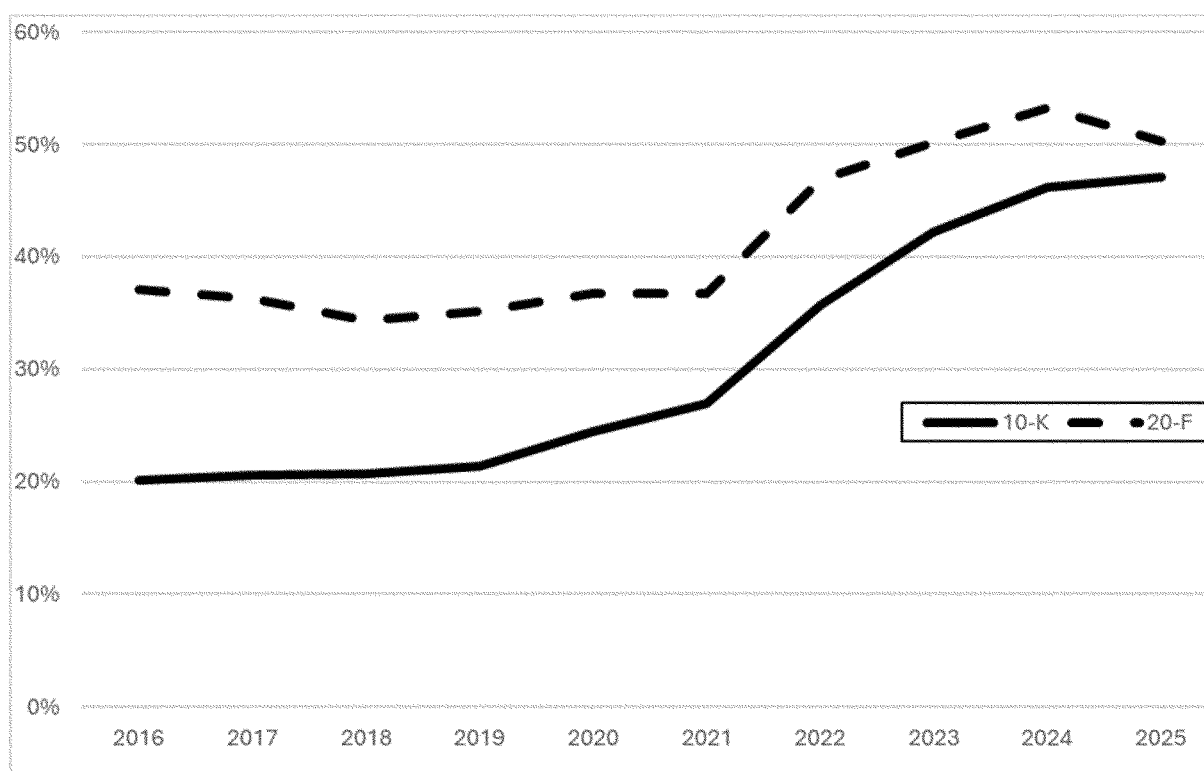
Figure 1 shows that the percentage of Form 10–K and Form 20–F filings that contain climate-related keywords has

increased between 2016 and 2025, particularly as of 2021.

²⁶¹ Foreign private issuers who elected to file their annual report on Form 10–K would be

classified as domestic filers for the purposes of this analysis of climate-related keywords.

**Figure 1. Percentage of 10-K and 20-F Filings
with Climate-Related Keywords by Form Type
for the period from 2016 to 2025**



This figure presents the analysis of annual filings on Form 10-K and Form 20-F submitted to the Commission between January 1, 2016, and December 31, 2025. In each calendar year, for each form type, the figure shows the percentage of filings containing any of the climate-related keywords.

Table 2 shows the breakdown of annual filings with any of the climate-related keywords by filer status in 2024 and 2025. In both years, the share of filings with climate-related keywords submitted by LAFs and AFs was

significantly greater than the share of filings with climate-related keywords submitted by NAFs. For example, in 2024 and 2025, 79 and 81 percent of filings submitted by LAFs contained climate-related keywords, compared to

33 percent of those submitted by NAFs. Relatedly, one report finds that 84 percent of S&P 500 companies disclosed climate change as a risk factor in 2024.²⁶²

²⁶² See Matteo Tonello, *Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets*, Harv. L. Sch. Forum on Corp. Governance

(May 3, 2025) (“Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets”), available at <https://corpgov.law.harvard.edu/2025/05/03/>

[corporate-climate-disclosures-and-practices-risk-emissions-and-targets/](https://corpgov.law.harvard.edu/2025/05/03/corporate-climate-disclosures-and-practices-risk-emissions-and-targets/).

Table 2. 10-K and 20-F Filings with Climate-Related Keywords by Filer Status, 2024-2025

Year	Filer Status	Number of Filings with any Keyword	Total Number of Filings	Percent
2024	LAF	1,992	2,507	79%
	AF	672	1,028	65%
	NAF	1,372	4,194	33%
	Not Identified	38	923	4%
	All	4,074	8,652	47%
2025	LAF	1,963	2,430	81%
	AF	654	1,002	65%
	NAF	1,314	3,976	33%
	Not Identified	46	947	5%
	All	3,977	8,355	48%

This table presents the analysis of annual filings submitted to the Commission between January 1, 2024, and December 31, 2025. For each filer status, the table shows the number of filings that contain any of the climate-related keywords.

Table 3 presents the analysis of climate-related keywords in Commission filings, broken down by SRC and EGC status. The share of filings with climate-related keywords is generally lower for issuers that are either SRCs, EGCs, or both, as compared to issuers that are neither SRCs nor EGCs.

**Table 3. 10-K and 20-F Filings with Climate-Related Keywords by SRC/EGC Status
2024-2025**

Year	SRC/EGC Status	Number of Filings with Any Keyword	Total Number of Filings	Percent
2024	SRC & EGC	350	1,387	25%
	SRC only	695	2,117	33%
	EGC only	315	665	47%
	Neither/Not Identified	2,714	4,483	61%
	All	4,074	8,652	47%
2025	SRC & EGC	322	1,238	26%
	SRC only	683	1,958	35%
	EGC only	299	731	41%
	Neither/Not Identified	2,673	4,428	60%
	All	3,977	8,355	48%

This table presents the analysis of annual filings submitted to the Commission between January 1, 2024, and December 31, 2025. For each SRC/EGC status, the table shows the number of filings that contain any of the climate-related keywords.

Table 4 provides a breakdown of the recent filings by industry and shows that the industries with the highest

percentage of annual reports containing climate-related keywords include transportation and utilities (*i.e.*,

communications, electric, gas, and sanitary services), mining, and construction.

Table 4. 10-K and 20-F Filings with Climate-Related Keywords by Industry, 2024-2025

Industry by SIC Division Structure	Number of Filings with Any Keyword	Total Number of Filings	Percent
Transportation & Public Utilities	807	1,058	76%
Mining	559	753	74%
Construction	121	170	71%
Retail Trade	401	654	61%
Wholesale Trade	165	279	59%
Manufacturing	2,783	5,739	48%
Agriculture, Forestry & Fishing	51	109	47%
Services	1,119	2,947	38%
Finance, Insurance & Real Estate	1,824	4,912	37%
Not Identified	221	386	57%
All Industries	8,051	17,007	47%

This table presents analysis of annual filings submitted to the Commission between January 1, 2024, and December 31, 2025. The division level of the Standard Industrial Classification (SIC) was used to classify filings by industry. *See* Department of Labor, Occupational Safety and Health Administration, Standard Industrial Classification (SIC) Manual, <https://www.osha.gov/data/sic-manual/> (“SIC Manual”). For each industry, the table shows the number of filings submitted that contain any of the climate-related keywords, the total number of filings, and the share of filings that contain any of the climate-related keywords.

Other sources also report variation in climate-related disclosures across industries. For example, one report finds that, as of 2024, most public companies across the Russell 3000 and S&P 500 disclose their exposure to climate risk, especially in certain industries, such as utilities, energy, and

real estate, materials and consumer staples.²⁶³ To help inform on the context in which registrants may use climate-related keywords in their 10-K and 20-F filings, Commission staff conducted additional analysis. Commission staff examined those filings containing any of the climate-related keywords for the

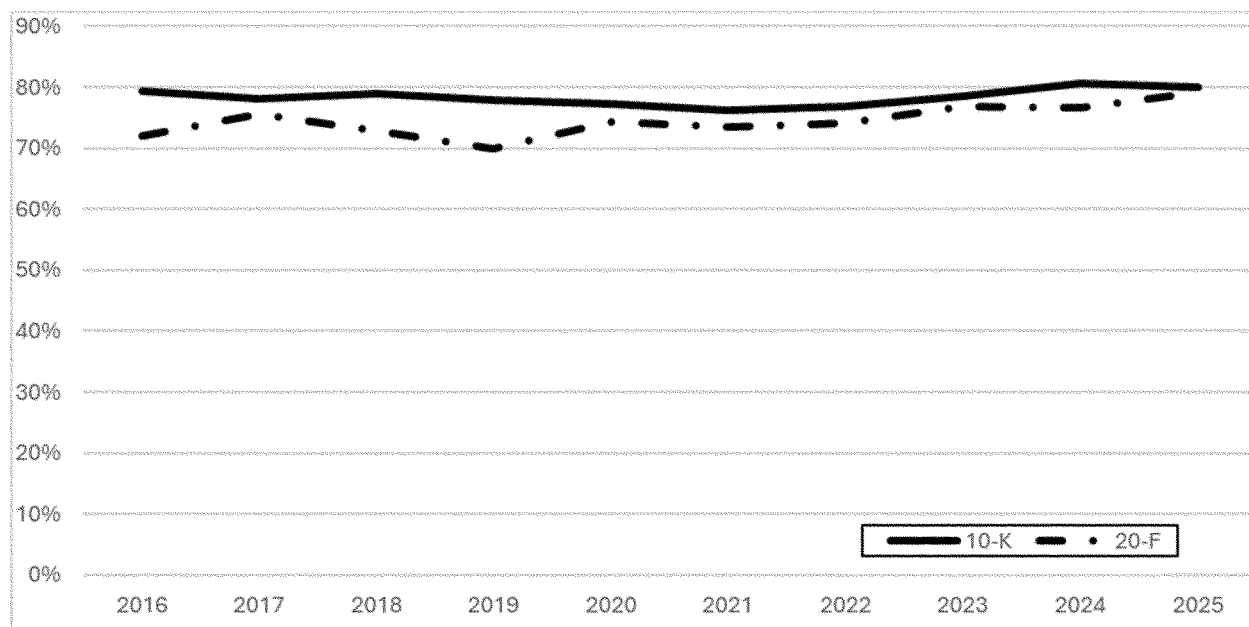
presence of additional economics-related keywords within the vicinity of a climate-related keyword.²⁶⁴ Figure 2 shows that, in every year from 2016 to 2025, at least 70 percent of filings with a climate-related keyword also contained an economics-related keyword in the vicinity of a climate-related keyword.

²⁶³ See Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets.

²⁶⁴ We analyzed text within a 300-character neighborhood of each identified climate-related keyword for the presence or absence of any of the following keywords related to economic effects:

“cost*,” “demand,” “sales,” “price*,” “revenue*,” “profit*,” “liability,” “litig*,” “competiti*,” “reputation*,” “customer*,” “consumer*,” and “counterpart*.”

**Figure 2. Filings with Economics-Related Keywords
as a Share of Filings with Climate-Related Keywords
by Form Type (10-K and 20-F filings) for the period 2016-2025**



For those filings that contain any of the climate-related keywords over the period 2024–2025, Table 5 provides a breakdown by industry and shows

which industries have the highest percentage of filings with an economics-related keyword.²⁶⁵ The data show that filings containing an economics-related

keyword were more prevalent in industries such as mining, construction, transportation and utilities, and retail trade.

²⁶⁵ Filings are grouped by industry based on the industry identified by Standard Industrial

Classification (SIC) Division Structure of the registrant that made the filing. *See* SIC Manual.

**Table 5. Filings with Economics-Related Keywords as a Share of Filings
with Climate-Related Keywords by Industry, 2024-2025**

Industry by SIC Division Structure	Number of Filings with Any Economics- Related Keyword	Total Number of Filings with Any Climate- Related Keyword	Percent
Mining	527	559	94%
Construction	110	121	91%
Transportation & Public Utilities	719	807	89%
Retail Trade	351	401	88%
Wholesale Trade	139	165	84%
Finance, Insurance & Real Estate	1,477	1,824	81%
Manufacturing	2,146	2,783	77%
Agriculture, Forestry & Fishing	38	51	75%
Services	742	1,119	66%
Not Identified	188	221	85%
All Industries	6,437	8,051	80%

This table presents analysis of annual filings that contain any of the climate-related keywords, which were submitted to the Commission between January 1, 2024, and December 31, 2025. The division level of the Standard Industrial Classification (SIC) was used to classify filings by industry. *See* SIC Manual. For each industry, the table shows the number of filings submitted that contain any of the economics-related keywords in the vicinity of a climate-related keyword, the total number of filings containing any of the climate-related keywords, and the share of all filings that contain an economics-related keyword.

b. GHG Emissions

Commission staff also updated the analysis included in the Adopting Release regarding GHG emissions reporting.²⁶⁶ Commission staff analyzed London Stock Exchange Group (“LSEG”) data on Scope 1 and Scope 2 emissions²⁶⁷ disclosed by Commission registrants.²⁶⁸ LSEG compiles these data

from companies’ annual filings, sustainability reports, and other public disclosures.²⁶⁹ Companies in the LSEG data we analyzed were matched to Commission data on Commission registrants, and the LSEG data we analyzed covers 5,391 Commission registrants.²⁷⁰ Table 6 shows that, in fiscal year 2022, 21 percent of these registrants (1,152 out of 5,391) reported

their Scope 1 or Scope 2 emissions. LAFs had the highest disclosure rate (51 percent), while SRCs and EGCs had the lowest disclosure rate (1 percent). Table 6 also shows that about 23 percent of all registrants disclosed their Scope 1 or Scope 2 emissions in fiscal year 2023, with about 55 percent of LAFs disclosing either their Scope 1 or Scope 2 emissions.²⁷¹

²⁶⁶ *See* Adopting Release, section IV.A.5.b.ii.

²⁶⁷ *See supra* note 19 for an explanation of these terms.

²⁶⁸ This analysis is based on currently available LSEG data on Scope 1 and Scope 2 emissions and thus does not necessarily reflect information on Scope 1 and Scope 2 emissions that are required to be disclosed under the Final Rules.

²⁶⁹ There are caveats to the LSEG data. To the extent that LSEG is not able to fully track all emissions disclosures, the disclosure rates

calculated from LSEG data may understate the average disclosure rates for all Commission registrants. Conversely, to the extent that LSEG’s coverage universe (*i.e.*, the Russell 3000) excludes smaller registrants that are less likely to report on emissions disclosures, the disclosure rates calculated from LSEG data may overstate the average disclosure rates for all Commission registrants.

²⁷⁰ Companies in the LSEG database were matched to Commission data on Commission registrants by ISIN, CUSIP, or ticker symbol.

Overall, 5,391 registrants were matched to companies in the LSEG database. The final matched sample of 5,391 registrants comprises 2,713 registrants that are either SRCs or EGCs, along with 2,668 other registrants that disclosed their filer status and 10 registrants that did not disclose their filer status.

²⁷¹ Because data collection of GHG emissions disclosure can lag by 18 months or longer, FY 2022 and FY 2023 are the most recent years for which data are largely complete.

Table 6. Registrants Disclosing Scope 1 or Scope 2 Emissions

Filer status (1)	SEC registrants (2)	Registrants covered in third-party emissions database (3)	Coverage rate (4)	Scope 1 or 2 emissions disclosures			
				FY 2022		FY 2023	
				Disclosed (5)	Disclosure rate (6)	Disclosed (7)	Disclosure rate (8)
LAF	2,384	2,016	85%	1,029	51%	1,103	55%
AF	540	459	85%	79	17%	85	19%
NAF	523	193	37%	5	3%	10	5%
SRC/EGC	3,575	2,713	76%	36	1%	35	1%
Not Identified	880	10	1%	3	30%	4	40%
Total	7,902	5,391	68%	1,152	21%	1,237	23%

Commission staff used the LSEG Refinitiv ESG database.

These statistics are based on Commission registrants that filed annual reports in calendar year 2024. For LAF, AF, and NAF registrant counts, only those that are not SRCs or EGCs are included.

The matched sample consists of the number of Commission registrants that are covered in the LSEG database.

In each row, the value in Column (4) equals the value in Column (3) divided by the value in Column (2).

In each row, the value in Column (6) equals the value in Column (5) divided by the value in Column (3).

In each row, the value in Column (8) equals the value in Column (7) divided by the value in Column (3).

Other sources report on corporate disclosures relating to GHG emissions. One report finds that, in 2024, more than 50 percent of Russell 3000 companies disclosed each of Scope 1 and Scope 2 emissions, while the percentages of S&P 500 companies making these disclosures exceeded 90 percent.²⁷² Another report, based on a 2024 survey of 300 executives at companies with annual revenues of at least \$500 million, finds that most of these firms are reporting on Scope 1 and Scope 2 emissions and also documents

heterogeneity across industries with respect to emissions reporting.²⁷³

c. Disclosures of Climate-Related Targets

To update the discussion in the Adopting Release,²⁷⁴ Commission staff reviewed current information about disclosures of climate-related targets. One report shows that the share of companies disclosing a climate-related target in the Russell 3000 almost doubled from 2021 to 2024, increasing

from 22 percent to 41 percent.²⁷⁵ This report shows an even greater proportion of S&P 500 companies setting targets, with 73 percent in 2021 growing to 87 percent in 2024.²⁷⁶ In addition, this report shows heterogeneity across industries with respect to climate-related targets. In 2024, disclosure rates for climate-related targets were highest among Russell 3000 companies in the Utilities (85 percent), Materials (73 percent), Consumer Staples (64 percent), Real Estate (57 percent) and Energy (55 percent) industries.²⁷⁷

²⁷³ See Deloitte & Touche LLP, 2024 Sustainability Action Report (July 2024), available at <https://www.deloitte.com/content/dam/assets-zone3/us/en/docs/services/audit-assurance/2024-2024-sustainability-action-report.pdf>.

²⁷⁴ See Adopting Release, section IV.A.5.d.

²⁷⁵ See Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷² See Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets.

Commission staff also updated analysis in the Adopting Release that examined the Bloomberg ESG database, which is focused on registrants listed on

NYSE and Nasdaq. This database reports Bloomberg analysis on counts of registrants with climate-related targets and goals. The updated results, which

are based on 2024 data, are reported in Table 7 below. The results are generally consistent with data from the sources discussed above.

Table 7. Registrants in Bloomberg ESG database with Targets or Goals in 2024

	Climate Change Policy ¹	Emissions Reduction Initiatives ²	Science-Based Targets ³	Net Zero Plans ⁴
All issuers	54%	51%	12%	22%
LAFs	74%	71%	18%	34%
AFs	36%	31%	3%	8%
NAFs	14%	10%	1%	3%
Not Identified	84%	86%	17%	51%
EGCs	25%	19%	1%	7%
Non EGCs	56%	53%	12%	23%
SRCs	13%	9%	1%	1%
Non SRCs	67%	64%	15%	29%

Sources: Bloomberg, Commission filings

¹ Bloomberg defines this field as indicating: “whether the company has outlined its intention to help reduce global emissions of the Greenhouse Gases that cause climate change through its ongoing operations and/or the use of its products and services. Examples might include efforts to reduce Greenhouse Gas (GHG) emissions, efforts to improve energy efficiency, efforts to derive energy from cleaner fuel sources, investment in product development to reduce emissions generated or energy consumed in the use of the company’s products etc. “N” indicates that the company has not explicitly disclosed any such efforts in its most recent Annual or Company Responsibility reports. Field is part of the Environmental, Social and Governance (ESG) group of fields.”

² Bloomberg defines this field as indicating: “whether the company has implemented any initiatives to reduce its emissions, such as GHGs, SOx, NOx, or other air pollutants. N indicates that the company has not explicitly disclosed any such efforts in its most recent Annual or Company Responsibility reports. Field is part of the Environmental Social and Governance (ESG) group of fields.”

³ Bloomberg defines this field as indicating: “that Bloomberg has found a GreenHouse Gas (GHG) target that has been disclosed to and validated by the Science Based Targets Initiative (SBTi). If no evidence of a validated target was found in the past 24 months the return will be ‘N’.”

⁴ Bloomberg defines this field as indicating: “that Bloomberg has found evidence of a net zero target in publicly available company reports, CDP climate change questionnaire or the Science Based Targets Initiative (SBTi) database. If no evidence of a net zero target was found in the past 24 months the return will be ‘N’. This field does not consider targets labeled as carbon neutral.”

d. Third-Party Frameworks for Disclosure

To update the discussion in the Adopting Release regarding third-party climate disclosure frameworks, Commission staff reviewed current information about third-party disclosure frameworks, which were discussed in the Adopting Release.²⁷⁸ Such frameworks, which were developed with the aim of helping firms and investors identify, measure, and communicate climate-related information into business practices, continue to take diverse approaches to

disclosure²⁷⁹ and to evolve.²⁸⁰ For

²⁷⁹ See, e.g., Inst. of Corp. Resp. & Sustainability, *Key ESG Reporting Frameworks* (Jan. 2024), available at <https://icrs.info/media/ykfoj5ib/key-esg-reporting-frameworks-january-2024.pdf> (identifying 16 distinct third-party disclosure frameworks, some of which were not discussed in the Adopting Release). The frameworks discussed in the report include six regulatory disclosure requirements and standards, six sustainability reporting frameworks and indices, and four reporting disclosure frameworks and standards that are characterized as forthcoming within three years.

²⁸⁰ See, e.g., *supra* section IV.B.2.c (discussing developments in international disclosure

²⁷⁸ See Adopting Release, section IV.A.5.c.

example, the TCFD disbanded in 2023, and its responsibilities were assumed by the ISSB in 2024. The ISSB has developed sustainability disclosure standards that not only build on the recommendations of the TCFD but also integrate parts of other frameworks and standards, to include the SASB standards, the Integrated Reporting Framework, the Climate Disclosure Standards Board (CDSB) Framework application guidance, certain requirements and definitions used by the International Accounting Standards board, and the Greenhouse Gas Protocol.²⁸¹ Corporate climate disclosures and practices have evolved alongside these frameworks. One report finds that, over time, climate-related “[d]isclosures have . . . become more structured and aligned with the [TCFD].”²⁸²

e. Third-Party Assurance

To update the discussion in the Adopting Release regarding third-party assurance, Commission staff reviewed recent trends in third-party assurance for ESG reporting. Several reports document growth in the use of external assurance in sustainability reporting.²⁸³ One report on trends in sustainability reporting by Russell 1000 companies shows an increase in these companies’ use of external assurance in every year from 2020 to 2024, with 51 percent using external assurance in 2024.²⁸⁴ Another report shows an increase in the use of external assurance by S&P 500 companies that reported sustainability information, from 70 percent in 2022 to 73 percent in 2023.²⁸⁵ This report also states that S&P 500 companies reporting on sustainability obtained external assurance mostly for reporting on their

requirements for climate-related matters since the adoption of the Adopting Release).

²⁸¹ See IFRS Found., Introduction to the ISSB and IFRS Sustainability Disclosure Standards, <https://www.ifrs.org/sustainability/knowledge-hub/introduction-to-issb-and-ifrs-sustainability-disclosure-standards/>.

²⁸² See Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets.

²⁸³ See Governance & Accountability Institute, Inc., 2025 Sustainability Reporting in Focus (2025), available at <https://www.ga-institute.com/research/research/sustainability-reporting-trends/2025-sustainability-reporting-in-focus/> (“2025 Sustainability Reporting in Focus”); Ctr. for Audit Quality, *S&P 500 Sustainability Reporting and Assurance Analysis* (June 2025), available at <https://www.thecaq.org/sp-500-and-esg-reporting/> (“2025 CAQ Analysis”); S&P Global, *S&P Global’s Top 10 Sustainability Trends to Watch in 2025* (Jan. 15, 2025), available at <https://www.spglobal.com/sustainable/en/insights/2025-esg-trends> (“2025 S&P Trends”); Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets.

²⁸⁴ See 2025 Sustainability Reporting in Focus.

²⁸⁵ See 2025 CAQ Analysis. The analysis in this report excludes information disclosed by companies in Commission filings.

GHG emissions, but that the scope of all activities subject to assurance has become broader over time. At least two other reports document growth in companies’ use of external assurance for emissions data in particular.²⁸⁶

Commission staff analyzed Bloomberg ESG data, which focuses on registrants listed on the NYSE and Nasdaq, for information as to whether environmental policies and data were subject to an independent assessment. In 2024, 19 percent of registrants in the Bloomberg ESG data disclosed their use of external assurance. More than 91 percent of these registrants were LAFs, and almost none of the registrants were SRCs or EGCs.

C. Benefits and Costs

We are proposing to rescind the Final Rules in their entirety. We discuss below the benefits and costs of the proposed rescission. We estimate monetized benefits and costs per affected registrant where possible, and we present aggregate measures of the monetized effects.

1. Benefits

a. Direct Benefits

The principal benefits of rescinding the Final Rules would be in the form of cost savings to registrants from not having to comply with the Final Rules’ requirements. Reductions in compliance costs decrease the resources that registrants must devote to compliance activities. As a result, registrants may experience lower operating expenses and increased cash flow, holding other factors constant. Registrants may allocate these savings toward capital investment or other productive uses, which may improve capital allocation efficiency and expected future cash flows.²⁸⁷ The extent of these impacts is influenced by factors such as the availability of positive net present value investment opportunities, managerial incentives, and market conditions. When compliance cost savings increase a registrant’s profitability or free cash flow, investors may benefit through higher expected returns, including

²⁸⁶ See 2025 S&P Trends; Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets.

²⁸⁷ See, e.g., Craig Lewis & Joshua White, *Deregulating Innovation Capital: The Effects of the JOBS Act on Biotech Startups*, 12 Rev. Corp. Fin. Stud. 240 (2023); see also Michael Dambra & Matthew Gustafson, *Do the Burdens to Being Public Affect the Investment and Innovation of Newly Public Firms?*, 67 Mgmt. Sci. 594 (2021) (finding that the JOBS Act exemptions led to more efficient investment for newly public companies with the elimination of certain disclosure, auditing, and governance requirements for a subset of newly public firms).

potential increases in dividends, share repurchases, or firm valuation. Also, shareholder value may increase for registrants when reductions in compliance costs result in higher expected future cash flows.²⁸⁸

To estimate cost savings from the proposed rescission, we started with the cost estimates provided in the Adopting Release and updated these estimates to account for inflation since the Final Rules were adopted in March 2024.²⁸⁹ The cost estimates in the Adopting Release were informed, in part, by public comment letters. Commenters offered a wide range of cost estimates, suggesting that there was significant variance in expected compliance costs among registrants.²⁹⁰ More generally, the nature of the cost information used to derive these estimates ranged from survey results, estimates directly from identifiable companies, estimates from anonymous companies, and general estimates, either based on industry experience, fees for related services, or derived as part of similar rulemaking processes in other jurisdictions.²⁹¹ In the Adopting Release, Commission staff was unable to quantify all direct and indirect costs of the Final Rules.²⁹² Similarly, as discussed below, our quantified estimates of the cost savings from the rescission of the Final Rules do not include all direct and indirect cost savings.

In Table 8, for those cost savings we can monetize, we report estimates of the initial cost savings and the annual costs savings per affected registrant that are associated with the rescission of each of the principal requirements of the Final Rules. The savings in initial costs represent compliance cost savings from registrants not incurring one-time implementation costs. We assume that, given the Commission’s stay of the Final Rules, registrants have not incurred the initial costs associated with the Final

²⁸⁸ Shareholder value would also be affected to the extent that regulatory changes lessen transparency and weaken investor protection. This issue is discussed in further detail *infra* section IV.C.2.

²⁸⁹ See Adopting Release, section IV.C.3.b. These cost savings estimates do not reflect anticipated changes to the filer statuses of certain affected parties if the Filer Status Proposing Release is adopted as proposed. Registrants that would be newly eligible for NAF status under the proposal would benefit from reduced compliance costs under the Final Rules if the Final Rules were to go into effect. Consequently, the cost savings from the proposed rescission would be smaller than estimated here.

²⁹⁰ See Adopting Release, section IV.C.3.a and section IV.C.3.b.

²⁹¹ See *id.*, section IV.C.3.a.

²⁹² See *id.*, section IV.C.3.

Rules' implementation.²⁹³ The savings in annual costs represent recurring annual cost savings from registrants not having to comply annually with the Final Rules' requirements.

In Table 8, across individual requirements, an affected registrant may benefit from savings in initial costs that range from \$103,483 (Targets and goals) to \$526,850 (Financial statement effects disclosures) and savings in annual costs that range from \$56,916 (Attestation of Scope 1 and Scope 2 emissions disclosure at the limited assurance level) to \$395,138 (Financial statement effects disclosures). The largest cost savings are associated with the proposed rescission of the amendments to Regulation S–X (Financial statement effects disclosures). With regard to these amendments to Regulation S–X, an

²⁹³ If some registrants have already incurred some implementation costs, then their expected initial cost savings would be lower.

affected registrant would also save an estimated \$24,235 in incremental annual audit fees under the proposed rescission.²⁹⁴

A registrant's actual cost savings could vary significantly from those reported in Table 8 depending on company characteristics, such as company size, industry, business model, the complexity of the company's corporate structure, existing climate-related disclosure practices, and internal expertise.²⁹⁵ For instance, a

²⁹⁴ See Adopting Release, section IV.C.3.b. As explained below, we have updated the Adopting Release's estimates of the costs of the Final Rules' requirements for inflation.

²⁹⁵ See *id.*, section IV.C.3. A registrant's compliance costs under the Final Rules may be lower if, for example, it does not conduct scenario analysis, does not have material Scope 1 and 2 emissions, has no climate-related target or goal, and has no applicable expenditures or financial statement effects that require disclosure, thereby avoiding the corresponding costs of the aforementioned disclosure items.

registrant's cost savings from the proposed rescission could be lower if it already provides disclosures that are similar to those required by the Final Rules.²⁹⁶ Even registrants for which climate-related risks may have little to no direct relevance to their particular facts and circumstances would experience cost savings under the proposed rescission, as the Final Rules require them to consider specific aspects of climate-related risk management on at least an annual basis in order to make a determination about whether they will be required to disclose anything under the Final Rules.

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²⁹⁶ If a registrant's current disclosures are similar to those required under the Final Rules, then the registrant could already have incurred some costs for preparing these disclosures and thus its incremental costs to comply with the Final Rules could be lower.

Table 8: Estimated Monetized Cost Savings per Affected Registrant

Rescinded Requirement in the Final Rules	Cost Savings Estimates	
	Savings in Initial Costs	Savings in Annual Costs
Article 14 of Regulation S-X (Financial statement effects disclosures) ¹	\$526,850	\$395,138
Incremental Audit Fees	Not Monetized	\$24,235
Item 1501 of Regulation S-K (Governance) ²	\$344,588*	\$192,969*
Item 1502 of Regulation S-K (Strategy—excluding scenario analysis) ³		
Item 1503 of Regulation S-K (Risk management) ⁴		
Item 1502 of Regulation S-K (Strategy—scenario analysis only) ⁵	\$126,859	\$63,430
Item 1504 of Regulation S-K (Targets and goals) ⁶	\$103,483	\$56,916
Item 1505 of Regulation S-K (GHG emissions metrics) ⁷	\$159,492	\$70,176
Item 1506 of Regulation S-K (Attestation of Scope 1 and Scope 2 emissions disclosure) ⁸	Not Monetized	\$52,685 (limited) \$158,055 (reasonable)
Item 1508 of Regulation S-K (Structured data) ⁹	Not Monetized	Not Monetized

¹ See Adopting Release, section IV.C.3.b.v and 17 CFR 210.14-01, 17 CFR 210-14.02.

² See Adopting Release, section IV.C.3.b.i and 17 CFR 229.1501.

³ See Adopting Release, section IV.C.3.b.i and 17 CFR 229.1502.

⁴ See Adopting Release, section IV.C.3.b.i and 17 CFR 229.1503.

⁵ See Adopting Release, section IV.C.3.b.iv and 17 CFR 229.1502.

⁶ See Adopting Release, section IV.C.3.b.iv and 17 CFR 229.1504.

⁷ See Adopting Release, section IV.C.3.b.ii and 17 CFR 229.1505.

⁸ See Adopting Release, section IV.C.3.b.iii and 17 CFR 229.1506.

⁹ See 17 CFR 229.1508.

Note: These values have been adjusted from the Final Rules' estimates upwards 5.37% to account for inflation, using the 2024 and 2025 annual GDP Deflator, accessed March 11, 2026, and rounded to the nearest whole dollar. The monetized cost savings in this table are not annualized values under discount rate analysis.

*The Adopting Release similarly did not separately monetize the costs associated with each of these three requirements.

b. Indirect Benefits

In addition to the direct benefits described above, the proposed rescission would yield indirect benefits for registrants, investors, and other third parties by eliminating indirect costs of the Final Rules.

1. Indirect Benefits to Registrants

The proposed rescission would reduce the risk of competitive harm to registrants by eliminating the prescriptive disclosure requirements in the Final Rules. Several commenters to the Proposing Release expressed concerns that the disclosure requirements could elicit too much information and could provide competitors with insights into a company's business model, cost structure, supply chain vulnerabilities, or future strategic plans.²⁹⁷ As a result, a registrant could be placed at a competitive disadvantage if rivals used this information to adjust their own strategies, target vulnerable areas, or replicate innovative approaches. Even with certain adjustments made in the Final Rules—such as adding materiality qualifiers and allowing flexibility in the level of detail that must be provided²⁹⁸—the Final Rules could still elicit competitively sensitive or proprietary information that competitors could exploit or otherwise use to gain a competitive advantage. For example, the Final Rules' requirement to disclose scenario analysis assumptions and inputs as well as information about internal carbon prices, could reveal competitively sensitive information, such as asset allocation decisions.²⁹⁹

The proposed rescission would also remove potential disincentives for registrants to implement strategies and undertake certain actions to manage climate-related risks where it would be beneficial to do so but for the costs of having to disclose such actions (which could include potentially confidential or proprietary information) under the Final Rules.³⁰⁰ Faced with the detailed disclosure requirements in the Final Rules, registrants might alter their business strategies as they relate to climate-related risks—not just to comply with the requirements of the Final Rules, but to manage the risks of legal liability, litigation defense costs, and reputational impacts. For example, registrants might choose to abandon climate-related targets and goals to avoid associated disclosure obligations

or change their risk management strategies in ways that are less than optimal for the sake of achieving what they perceive to be more favorable climate-related disclosure.³⁰¹ Additionally, registrants might be less willing to voluntarily develop or pilot new climate strategies, scenario analyses, or transition plans if doing so would require detailed public disclosure of sensitive forward-looking information, potentially exposing them to competitive risks or litigation.³⁰² Although the Final Rules attempted to address these concerns by adding materiality qualifiers and providing some flexibility in how registrants can satisfy the adopted requirements, the potential remains that the Final Rules might discourage voluntary climate initiatives and innovation, especially where registrants perceive that disclosures required under the Final Rules to increase their exposure to risk, criticism, or litigation.

Also, the proposed rescission would eliminate the additional litigation risk associated with the Final Rules' disclosure requirements.³⁰³ Under the Final Rules, any new disclosures provided by the registrant would be deemed “filed,” and thus subject to liability under the Securities Act and the Exchange Act.³⁰⁴ Although the Final Rules include safe harbor provisions for certain forward-looking statements,³⁰⁵ the required disclosures called for by the Final Rules would result in additional litigation risk for registrants. For example, the Final Rules require that any registrant that is not required to include a GHG emissions attestation report pursuant to Item 1506(a) disclose certain information if the registrant's GHG emissions disclosure is voluntarily subjected to third-party assurance.³⁰⁶ Including these disclosures in Commission filings would expose registrants to additional liability and accompanying litigation risk that could deter some registrants from voluntarily obtaining assurance, particularly if they have lower confidence in the quality of the services performed.³⁰⁷ To the extent that a registrant could have been deterred or disincentivized from voluntarily obtaining third-party assurance due to these concerns, the proposed rescission would remove this deterrent.³⁰⁸ Commenters to the

Proposing Release also raised concerns that the additional litigation risks associated with the proposed rules could lead to an increase in audit costs (to the extent auditors were also subject to increased litigation risk) and higher insurance costs for registrants and auditors.³⁰⁹ By rescinding the Final Rules and eliminating the additional litigation risk associated with increased Commission disclosures, the proposed rescission would eliminate these potential costs.³¹⁰

Additionally, the Final Rules required certain registrants—specifically LAFs and non-exempt AFs—to obtain third-party assurance over their GHG emissions disclosures. Commenters to the Proposing Release stated that there was a limited supply of climate-related experts and/or third-party assurance providers.³¹¹ Consequently, an assurance requirement would cause an increase in demand for such third parties, which could result in these experts and assurance providers charging higher fees to registrants, at least in the short term.³¹² The proposed rescission would eliminate these potential adverse consequences of the Final Rules, thus benefiting registrants.

2. Indirect Benefits to Investors and Other Third Parties

The proposed rescission would eliminate the risk of investor confusion or information overload due to the volume and scope of the disclosures required by the Final Rules.³¹³ For example, some commenters to the Proposing Release stated that the highly detailed disclosures required under the proposed rules would confuse investors by causing them to believe that climate-related risks are more important than other disclosed risks that are presented in less detail.³¹⁴ Other commenters

included in the Final Rules. Without these amendments, which serve to limit section 11 liability for third-party assurance providers, registrants that wish to voluntarily obtain third-party assurance may find it more difficult to obtain that assurance or refer to assurance reports in their Securities Act registration statements.

²⁹⁷ See *Adopting Release* at 21850 n.2761.

²⁹⁸ See *id.* section IV.C.1.b.

²⁹⁹ See *id.* at 21740 n.1120.

³⁰⁰ See *id.* section IV.C.1.b. The Adopting Release stated that over time the supply of third parties with climate-related expertise would likely have adjusted to correspond with the increased demand, bringing some downward pressure on these third parties' fees. Also, the Adopting Release discusses this indirect effect separately from its estimates of the compliance costs associated with 17 CFR 229.1505. We cannot rule out, however, that these estimated compliance costs could have accounted for a potential increase in audit fees under the Final Rules.

³⁰¹ See *Adopting Release*, section IV.C.2.b. and section IV.C.2.h.i.

³⁰² See *Adopting Release* at 21690 n.287.

³⁰³ See *id.*, section IV.C.2.d and section IV.D.

³⁰⁴ See *id.*, section IV.C.2.b.

³⁰⁵ See *id.*, section IV.C.2.f. and section IV.C.2.b.

³⁰⁶ See *id.*, section II.N.3.

³⁰⁷ See 17 CFR 229.1507 (Item 1507).

³⁰⁸ See *Adopting Release*, section IV.C.2.f.

³⁰⁹ See *id.*

³¹⁰ See *id.* The proposed rescission also would rescind the amendments to 17 CFR 230.436

²⁹⁷ See, e.g., *Adopting Release*, sections II.C.1.c., II.D.1.c., II.D.4.b., II.F. and IV.C.2.

²⁹⁸ See *id.*, section IV.C.1.b and section IV.E.2.

²⁹⁹ See *id.*, section IV.C.1.b and section IV.C.2.b.

³⁰⁰ See *id.*, section IV.C.1.b.

expressed concern about specific disclosures such as the disclosure of scenario analysis, stating that the results could confuse investors to the extent that they inadvertently suggest that the chance of a loss occurring due to a rare event is more likely.³¹⁵ Others stated that the financial statement disclosures could confuse or distract investors from other factors that have more significant impacts on the financial statements.³¹⁶ In response to these concerns, the Final Rules included materiality qualifiers for certain required disclosures and quantitative thresholds for financial statement disclosures. The Final Rules' structured data requirements could also serve to mitigate these concerns by providing a means for certain investors to organize and process the required disclosures. Nonetheless, the possibility remains that the volume and scope of information required to be disclosed under the Final Rules could unduly emphasize one particular type of risk that a registrant may face or reduce the practical utility of the disclosures for investors.

The proposed rescission would also eliminate the risk that registrants could pass on their compliance costs to third parties, such as consumers, workers, and shareholders. The Commission acknowledged in the Adopting Release that third parties could bear some of the increased costs of compliance arising from the Final Rules and that this effect may be more pronounced in certain industries than in others.³¹⁷ Although the Commission made certain changes in the Final Rules to mitigate these effects, the Final Rules would nevertheless impose significant new compliance costs on registrants, which could be passed on to third parties.³¹⁸ By eliminating the Final Rules' compliance costs, the proposed rescission would eliminate these potential pass through effects, thereby benefiting these third parties. Relatedly, certain of the Final Rules' disclosure requirements could result in registrants seeking input from third-parties, such as the requirement to disclose material impacts from climate-related risks on purchasers, suppliers, or other counterparties to material contracts with registrants.³¹⁹ The Final Rules sought to limit the compliance burden of this requirement by limiting information that is required to be disclosed to that which is "known or reasonably available." However, this requirement

could still impose costs on third parties whose relationship with the registrant is most likely to materially impact the registrant's strategy, business model and outlook, as well as third parties from whom the registrant might be best positioned to request information. The proposed rescission would eliminate these costs.

Lastly, the proposed rescission could benefit certain third parties, such as ESG information providers, third-party framework providers, specialty investment research providers, and environmental investing groups, as the increased disclosures in the Final Rules could have reduced institutional investors' reliance on these information providers, which could have hurt these providers.³²⁰

2. Costs

a. Direct Costs

The proposed rescission would eliminate the requirements in the Final Rules that registrants disclose highly granular information on climate-related matters in a standardized and centralized format in Commission filings. The direct costs of the proposed rescission would be borne by those subgroups of affected parties (including certain investors, financial intermediaries, and other stakeholders) who would use this information as part of their particular strategies (e.g., investment, advocacy).³²¹ The proposed rescission could make it more difficult for those affected parties to incorporate climate-related information into their valuation of registrants' securities and to make informed investment decisions.

We discuss below the direct effects of the proposed rescission on the scope, standardization, and centralization of climate-related information, including factors that could mitigate the magnitude of those effects.

1. Scope

The proposed rescission could reduce the scope of climate-related information—in terms of how much and what types of information must be disclosed—available to those investors who would use this information as part of their investment strategies. In the absence of the Final Rules, the SEC's existing disclosure requirements elicit disclosure of information about material climate-related matters and would continue to do so should the Final Rules be rescinded.³²² Many registrants, including in industries with higher carbon footprint (e.g., transportation and

utilities, mining, construction), are providing climate-related information in their annual reports on Form 10-K or 20-F absent the requirement to comply with the Final Rules.³²³ Where climate-related matters are material, the SEC's existing disclosure requirements give registrants flexibility to determine the specific information about those risks to provide investors. In contrast, the Final Rules specify an extensive list of disclosures that registrants must provide, such as disclosures under Item 1502 (Strategy) and, for registrants that are LAFs and non-exempt AFs, Item 1505 (GHG emission metrics) of Regulation S-K.³²⁴ Also, the Final Rules require some disclosures regardless of materiality, such as certain disclosures under Item 1501 (Governance) and Item 1503 (Risk management) of Regulation S-K.³²⁵ In addition, the Final Rules create Article 14 to Regulation S-X, which requires registrants to disclose, in a note to their audited financial statements, a series of climate-related financial statement effects and provide contextual information describing how each specified effect was derived, including a description of significant inputs and assumptions used, significant judgments made, and other information that is important to understand the effect.³²⁶

The impact of the reduction in scope of climate-related information under the proposed rescission could be partially mitigated, however. As discussed in section IV.B.3.d, as it relates to climate-related matters, disclosure frameworks and methodologies for measuring the economic impacts of these risks continue to evolve.³²⁷ In this context, and as the Adopting Release acknowledged, the Final Rules' granular approach to disclosures could increasingly result in disclosure of less useful information to those subgroups of affected parties who would use climate-related information as part of their particular strategies.³²⁸ Also, existing

³²³ See *supra* section IV.B.3 for a detailed discussion of current market practice and the rate of climate-related disclosure among registrants, absent the Final Rules.

³²⁴ See 17 CFR 229.1502 and, for a registrant that is a LAF or a non-exempt AF, 17 CFR 229.1505.

³²⁵ See 17 CFR 229.1501 and 17 CFR 229.1503.

³²⁶ See 17 CFR 210.14-01 and 17 CFR 210-14.02.

³²⁷ The Commission previously acknowledged the uncertainty, complexity, and multidimensional nature of climate-related risks, compounded by the evolving nature of the science and methodologies measuring their economic impacts; see *Proposing Release*, section IV.B.2.b; see also *Adopting Release* at 21690 n.289.

³²⁸ See *Adopting Release*, section II.A.1.a and section II.A.3. Further, to the extent climate-related information required to be disclosed under the Final Rules subject to an applicable materiality

³¹⁵ See *Adopting Release* at 21854 n.2799.

³¹⁶ See *Adopting Release* at 21867 n.2925.

³¹⁷ See *Adopting Release*, section IV.C.1.b

³¹⁸ See *id.*

³¹⁹ See *id.*

³²⁰ See *id.*

³²¹ See *supra* section IV.B.1.

³²² See *supra* sections III.C.1.a and IV.B.2.a.1.

State, Federal and international disclosure requirements could elicit climate-related disclosure from registrants that would otherwise have been required to provide disclosure under the Final Rules.³²⁹ Registrants may also be subject to disclosure regimes in other jurisdictions that elicit climate-related information, and registrants may choose to voluntarily disclose climate-related information to address investor interest.

2. Standardization

To facilitate comparability across registrants, the Final Rules mandate the disclosure of climate-related information in a standardized format by creating a structured set of disclosure categories and requiring registrants to use consistent definitions, terminology, and measurement units. The Final Rules create new Subpart 1500 of Regulation S–K (Items 1500–1506), whose provisions define certain climate-related concepts and establish consistent disclosure categories for registrants to use when describing climate-related risks. These disclosure categories require registrants to describe, using consistent definitions and terminology,³³⁰ the nature and time-horizon of climate-related risks and how these risks have affected, or are reasonably likely to affect, their strategy, results of operations, or financial condition.³³¹ All registrants are required to disclose consistent information about how their board of directors oversee climate-related risks and how management identifies and manages those risks.³³² Additionally, the Final Rules seek to normalize the disclosure of certain quantitative metrics related to GHG emissions using standardized units and recognized measurement frameworks.³³³ Companies that adopt climate-related targets or goals, transition plans, or used scenario analysis to manage climate-risks, are also required to disclose standardized information about those commitments, including the baseline year, the scope of emissions covered, the time horizon for

achieving targets, and progress toward the goal.³³⁴

The impact of the proposed rescission on the comparability of certain climate-related information would be mitigated to the extent that similar information is provided in a comparable format absent the Final Rules.³³⁵ When climate matters including transition risk, materially affect or threaten the operations or financial performance of a registrant, various existing Commission disclosure rules already require the registrant to discuss these effects in specific disclosure categories. Such rules include disclosure requirements in Regulation S–K related to the description of business (Item 101), legal proceedings (Item 103), risk factors (Item 105), and management's discussion and analysis of financial condition and results of operation (Item 303).³³⁶ The 2010 Guidance also noted that registrants must consider any financial statement implications in accordance with applicable accounting standards.

Although the Final Rules are intended to improve comparability overall, certain provisions of the Final Rules result in variation in how registrants report certain climate-related information, expenditures, and impacts, thus lessening the overall effects of the proposed rescission on comparability. The Final Rules include conditional disclosure requirements that apply only when companies engage in certain climate-related practices. For example, disclosures regarding climate target or goals, transition plans, or internal carbon pricing are required only if a company had adopted these practices.³³⁷ Registrants that actively manage climate risks through formal targets or transition planning would thus disclose substantially more information than registrants that do not, even if the underlying risks they face are comparable. Consequently, differences in corporate practice rather than differences in climate-related exposure might drive variation in disclosures.

Also, the Final Rules require that registrants describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of transition activities. The Adopting Release acknowledges that registrants may take different approaches in their determination of

which expenditures to include and whether to quantitatively or qualitatively identify portions of expenditures specifically tied to these activities, which would diminish the comparability benefits of the disclosures.³³⁸ Similarly, under the Final Rules, registrants retain discretion in emissions measurement methodology.³³⁹ Within existing frameworks, registrants can use different operational boundaries, estimation techniques, or data sources depending on their business activities and data availability. These methodological differences could lead to variation in reported emission levels, potentially limiting the ability of interested investors to compare emission metrics directly across registrants or industries.³⁴⁰

A similar comparability challenge arises with respect to the Final Rules' climate-related financial statement disclosures. Although these disclosures must follow prescribed standards, certain elements of the process for determining whether disclosures would be required would involve registrants exercising judgment or discretion. For example, the Final Rules would have required registrants to determine what constitutes a "severe weather event or other natural condition" based on the registrant's particular risks and other factors such as a registrant's historical experience. The Final Rules also would have required registrants to exercise judgment in assessing whether severe weather events or other natural conditions were a "significant contributing factor" in incurring costs, expenditures, charges, losses, or recoveries. Firms may have implemented these aspects of the Final Rules differently depending upon the methodologies or internal data systems they use, how these events and activities interact with other economic factors, and the industries and geographic environments in which the registrants operate. As a result, similar events and activities could be reflected differently in registrants' financial statement disclosures. Moreover, the financial statement disclosures would have involved estimation uncertainties that would be driven by the application of judgments and assumptions that might lead to variation in reported climate-related disclosures across firms. Investors might thus face difficulties in interpreting differences in reported disclosures, as those differences might reflect methodological choices rather

threshold does not (or would not in the future) meet that materiality threshold, the rescission of those requirements may ultimately result in minimal information loss.

³²⁹ See *supra* section IV.B.2. for a discussion of the current regulatory disclosure framework.

³³⁰ See 17 CFR 229.1500 (Item 1500) (Definitions).

³³¹ See 17 CFR 229.1502 (Item 1502) (Strategy).

³³² See 17 CFR 229.1501 (Item 1501) (Governance).

³³³ See 17 CFR 229.1505 (Item 1505) (GHG emissions metrics).

³³⁴ See 17 CFR 229.1502 (Item 1502) (Strategy) and 17 CFR 229.1505 (Item 1504) (Targets and goals).

³³⁵ See Adopting Release, section IV.B and section IV.C.1.a.

³³⁶ See *supra* section IV.B.2.

³³⁷ See Adopting Release, section IV.C.2.b.

³³⁸ *Id.*

³³⁹ See Adopting Release, section IV.C.2.e.

³⁴⁰ *Id.*

than underlying economic exposure to climate-related risks.

3. Centralization

Lastly, the Final Rules centralize climate-related information within Commission filings. The Final Rules require specific climate-related disclosures to appear in annual reports and registration statements, and they require the reporting of specific climate-related financial statement effects in the notes to the audited financial statements. Centralizing this information in Commission filings would allow it to be readily accessed from one source rather than having to be compiled from multiple different sources. Centralization in Commission filings would also subject the information to potential liability under the Securities Act and Exchange Act, thereby potentially increasing its reliability. In addition, the Final Rules require that the climate-related disclosures included in Commission filings be tagged in the Inline XBRL structured data language (on a phased in basis), for the purpose of making those disclosures more readily available for aggregation, comparison, filtering, and other enhanced analytical methods.³⁴¹

Under the proposed rescission, these requirements would no longer apply, thus reducing the benefits of centralization. The 2010 Guidance emphasizes that certain disclosure requirements in Regulation S-K and Regulation S-X may require disclosure about climate-related matters, and such disclosures are typically discussed within broader sections, such as Item 105 of Regulation S-K (Risk factors) or Item 303 of Regulation S-K (management's discussion and analysis of financial condition and results of operation).³⁴² With certain exceptions, disclosure responsive to such provisions would be required to be tagged in the Inline XBRL structured data language.³⁴³ Nonetheless, the proposed rescission could increase information search costs for those subgroups of affected parties who would use climate-

related information as part of their particular strategies. Those affected parties might need to devote more resources and time to collect and reconcile climate-related information from multiple sources outside of Commission filings, some of which may not be structured, thus likely increasing the costs of their investment analyses.

b. Indirect Costs

The proposed rescission could have indirect costs for third parties such as ESG data providers, climate analytics firms, environmental consulting firms, and other professional advisory services. These entities often process and analyze corporate disclosures to produce research reports, ratings, or datasets used by other affected parties, and they may use climate-related disclosures as part of their risk assessment or analytical activities. The proposed rescission could raise these entities' costs of collecting and analyzing corporate climate-related data.

The Final Rules were expected to boost demand for climate-related data, analytics, and advisory services. As registrants collect and disclose climate information—such as GHG emissions, governance practices, and climate-related risk assessments—the demand for specialized third-party services that support measurement, verification, and interpretation of these disclosures was expected to increase. Firms that provide emissions accounting tools, climate risk modeling, ESG analytics, and environmental consulting would thus benefit from increased demand for their services. This higher demand could also allow these firms to benefit by charging higher service fees to registrants, at least in the short term.³⁴⁴ The proposed rescission would eliminate these effects of the Final Rules.

The proposed rescission could also affect assurance providers and professional service firms. Under the Final Rules, certain registrants would eventually be required to obtain third-party assurance for GHG emissions disclosures. Even in cases where assurance was not required, companies might voluntarily seek external verification to enhance the credibility of their disclosures. This could create new business opportunities for accounting firms, environmental consultants, and verification specialists to provide assurance services related to climate

data, emissions measurements, and risk assessments. Increased demand for assurance providers and, more generally, third parties with climate-related expertise, could also lead these providers and third parties to benefit by charging higher fees to registrants, at least in the short term.³⁴⁵ The proposed rescission would also eliminate these effects of the Final Rules.

3. Aggregate Monetized Benefits and Costs

Throughout this economic analysis, we have estimated monetized benefits and costs per affected registrant, where possible. In this section, we present aggregate measures of these monetized effects. These totals include only benefits and costs that are monetized in the economic analysis and thus do not encompass all of the proposed rescission's benefits and costs.

a. Initial and Annual Aggregate Monetized Benefits and Costs

Tables 9, 10, 11, and 12 report initial and annual benefits that are monetized in this economic analysis, aggregated across affected registrants by registrants' filer statuses (Tables 9, 10, and 11) and across all affected registrants (Table 12).³⁴⁶ Because it was not practicable to monetize the costs of the proposed rescission, we do not report aggregate monetized costs. To aggregate the monetized benefits, we use estimates of the numbers of affected registrants for three groups of registrants: (1) LAFs, (2) non-exempt AFs, and (3) SRCs, EGCs, and NAFs.³⁴⁷ For the purpose of calculating aggregate monetized benefits, we assume that all affected registrants within a group of registrants would incur the same cost savings (*i.e.*, benefits).³⁴⁸

In each of Tables 9, 10, and 11, we report savings in initial costs and savings in annual (recurring) costs per affected entity, which we first presented in Table 8.³⁴⁹ We assume that, given the Commission's stay of the Final Rules, registrants have not incurred the initial costs associated with the Final Rules'

³⁴¹ See 17 CFR 229.1508 (Item 1508) (Interactive data requirement).

³⁴² See *supra* section IV.B.2.a.1.

³⁴³ For example, interactive data files are not typically required for initial public offerings other than those conducted by special purpose acquisition companies. Compare 17 CFR 229.601(b)(101)(i)(A) (providing that registrants conducting initial public offerings are not obligated to tag any disclosures until they file their first post-initial public offering periodic report on Form 10-Q, Form 20-F, or Form 40-F), with 17 CFR 229.601(b)(101)(i)(D) (requiring the tagging of information disclosed pursuant to subpart 1600 of Regulation S-K [17 CFR 229] in Inline XBRL for initial public offerings conducted by special purpose acquisition companies).

³⁴⁴ Over time, additional firms could enter the markets for providing emissions accounting tools, climate risk modeling, ESG analytics, and environmental consulting. The entry of these firms could introduce some downward pressure on the fees charged to registrants in these markets.

³⁴⁵ See Adopting Release, section IV.C.1.b.

³⁴⁶ In each table, all numbers have been rounded to the nearest whole number.

³⁴⁷ See *supra* section IV.B.1.

³⁴⁸ As we acknowledge above, cost savings could vary across registrants depending on company characteristics, such as company size, industry, business model, the complexity of the company's corporate structure, existing climate-related disclosure practices, and internal expertise. A registrant's cost savings from the proposed rescission could be lower if the registrant already provides disclosures that are similar to those required by the Final Rules and continues to do so. See *supra* notes 295 and 296.

³⁴⁹ See *supra* section IV.C.1.a.

implementation.³⁵⁰ Hence, for the purpose of estimating the initial cost savings from the proposed rescission, we assume for all affected registrants that the expected savings in initial costs accrue immediately upon rescission of the Final Rules (*i.e.*, at Time 0).³⁵¹

For savings in annual costs, we consider a 10-year horizon that starts upon the rescission (Years 1–10).³⁵² This time horizon represents the period over which the principal benefits and costs that are monetized in the economic analysis are expected to accrue.³⁵³ For each type of affected entity, for each provision, savings in annual costs start as of that provision's compliance date under the Final Rules. Hence, within each of Tables 9, 10, and 11, the year-by-year breakdown of the savings in annual costs reflects the staggered compliance dates for the different provisions under the Final Rules. For example, as we show in Table 9, LAFs need to comply with most of the provisions in Year 2 but do not need to comply with the Scope 1 and Scope 2 requirements until Year 3 and with the attestation requirement until Year 6. Hence, across all provisions, the expected cost savings for LAFs in Year 1 of the 10-year time horizon is \$0.

As we show in Table 10, non-exempt AFs are required to comply with the Final Rules one year after compliance is required for LAFs (*i.e.*, in Year 3).³⁵⁴ Thus, for non-exempt AFs, the expected

cost savings in Year 1 and Year 2 of the 10-year time horizon are \$0. Lastly, as shown in Table 11, SRCs, EGCs, and NAFs are required to comply with the Final Rules one year after compliance is required for non-exempt AFs (*i.e.*, in Year 4).³⁵⁵ As a result, the expected cost savings for SRCs, EGCs, and NAFs are \$0 in Year 1, Year 2, and Year 3 of the 10-year time horizon. Similarly, Tables 9 and 10 incorporate the phase-in for the Scope 1 and Scope 2 emissions disclosure requirement and the attestation requirement that applies to LAFs and non-exempt AFs under the Final Rules.³⁵⁶

In each of Tables 9, 10, and 11, for each year, we sum the cost estimates per affected entity across all provisions to obtain an estimate of the “annual cost savings per registrant” for Time 0 and each of the years in the 10-year time horizon. In Table 9, which applies to registrants with LAF filer status, the estimated annual cost savings per registrant range from \$0 in Year 1 to \$960,919 in Year 10. In Table 10, which applies to registrants classified as non-exempt AFs, the estimated annual cost savings per registrant range from \$0 in Year 1 to \$855,549 in Years 8 to 10. In Table 11, which applies to registrants classified as SRCs, EGCs, and NAFs, the estimated annual cost savings per

registrant range from \$0 in Year 1 to \$732,687 in Years 4 to 10.

Within each table, we then multiply the “annual cost savings per registrant” by the number of affected registrants to obtain an estimate of “total annual cost savings” for Time 0 and each of the years in the 10-year time horizon, across all provisions and all affected registrants in that table. We then aggregate these data in Table 12, which lists our estimates of combined total annual cost savings for Time 0 and each year, summed across all three groups of registrants. Across all three groups of affected registrants combined, we estimate a total cost savings of \$7,915,418,821 at Time 0 and total cost savings that range from \$1,720,349,390 to \$5,559,716,550 across Year 2 through Year 10. The estimated total annual cost savings are relatively lower in Years 2 and 3 due to non-exempt AFs, SRCs, EGCs, and NAFs having extended compliance periods under the Final Rules.

In sum, we estimate that the proposed rescission would significantly reduce regulatory compliance costs for domestic registrants and foreign private issuers affected by the Final Rules. We caution that we have developed these estimates under certain assumptions. In particular, we assume that: (1) due to the Commission's stay order, registrants have yet to incur any initial implementation costs, and (2) the cost savings estimate per affected entity reported in Table 8 in section IV.C.1.a applies to all registrants. As we noted in that section, actual cost savings could vary significantly across registrants based on a number of factors.³⁵⁷ Also, as we have highlighted throughout this economic analysis, our monetized estimates of the cost savings from the rescission of the Final Rules do not include all direct and indirect cost savings.

³⁵⁰ This assumption is reasonable given the Commission's stay of the Final Rules less than one month after the adoption of the Final Rules. To the extent that registrants have incurred initial costs associated with the Final Rules' implementation, then the initial cost savings from the proposed rescission—and by extension the cost savings of the proposed rescission—would be lower than we estimate.

³⁵¹ We use Time 0 to mark the effective date of the rescission.

³⁵² In other words, the 10-year horizon starts at Time 0, which marks the effective date of the rescission.

³⁵³ See OMB, Circular A–4, at 31 (stating that “[t]he ending point should be far enough in the future to encompass all the significant benefits and costs likely to result from the rule”).

³⁵⁴ See Adopting Release, section II.O.

³⁵⁵ See Adopting Release, section II.O.

³⁵⁶ The Final Rules provide a phase-in for another set of information—the material expenditures disclosure requirement, which will be provided pursuant to either Item 1502, as part of a registrant's strategy disclosure, or Item 1504 of Regulation S–K, as part of a registrant's targets and goals disclosure. All three groups of registrants must comply with the material expenditures disclosure requirement in the fiscal year immediately following the fiscal year of their initial compliance date for the Final Rules based on their filer status. We assume that costs for the material expenditures disclosure were included in the quantified cost estimates considered for strategy or targets and goals disclosure. Because the material expenditures disclosure will make up only part of a registrant's strategy or targets and goals disclosure and because most of the disclosure requirements pursuant to Item 1502 and Item 1504 are not subject to a phase-in under the Final Rules, the tables below do not account for the material expenditures phase-in. See Adopting Release, section II.O.

³⁵⁷ See *supra* notes 291 and 292.

Table 9. Estimated Annual Monetized Cost Savings for LAFs⁵
(2,348 registrants in 2025)

Rescinded Requirements¹	Savings in Initial Costs	Savings in Annual Costs	Time 0	Year 1	Year 2	Years 3 - 5	Years 6 - 9	Year 10
Financial statement effects disclosures	\$526,850	\$395,138	\$526,850	\$0	\$395,138	\$395,138	\$395,138	\$395,138
Incremental audit fees	\$0	\$24,235	\$0	\$0	\$24,235	\$24,235	\$24,235	\$24,235
Governance, Strategy (excluding scenario analysis), Risk management	\$344,588	\$192,969	\$344,588	\$0	\$192,969	\$192,969	\$192,969	\$192,969
Strategy - Scenario analysis only	\$126,859	\$63,430	\$126,859	\$0	\$63,430	\$63,430	\$63,430	\$63,430
Targets and goals	\$103,483	\$56,916	\$103,483	\$0	\$56,916	\$56,916	\$56,916	\$56,916
GHG emissions metrics ²	\$159,492	\$70,176	\$159,492	\$0	\$0	\$70,176	\$70,176	\$70,176
Attestation of Scope 1 and Scope 2 emissions disclosure ³	\$0	\$52,685 or \$158,055	\$0	\$0	\$0	\$0	\$52,685	\$158,055

Annual cost savings per registrant				\$0	\$732,687	\$802,864	\$855,549	\$960,919
Total Annual Cost Savings⁴				\$0	\$1,720,349,390	\$1,885,123,625	\$2,008,828,005	\$2,256,236,765

¹ For further information on savings in initial and annual (ongoing) costs, see *supra* section IV.C.1.a.
² LAFs are required to comply with the GHG emissions disclosure requirement beginning their second fiscal year of compliance with the Final Rules. See Adopting Release, section II.O and section II.H.
³ Under the Final Rules, LAFs are required to obtain limited assurance beginning the third fiscal year after compliance with GHG emissions disclosure requirements. Beginning the seventh fiscal year after compliance with GHG emissions disclosure requirements, LAFs are required to obtain an attestation report at a reasonable assurance level. See Adopting Release, section II.O and section II.I.
⁴ The total annual cost savings are calculated by multiplying the annual cost savings per registrant by 2,348, the estimated number of LAFs in 2025.
⁵ All numbers have been rounded to the nearest whole number.

Table 10. Estimated Annual Monetized Cost Savings for non-exempt AFs⁵
(541 registrants in 2025)

Rescinded Requirements¹	Savings in Initial Costs	Savings in Annual Costs	Time 0	Years 1-2	Years 3-4	Years 5-7	Years 8-10
Financial statement effects disclosures	\$526,850	\$395,138	\$526,850	\$0	\$395,138	\$395,138	\$395,138
Incremental audit fees	\$0	\$24,235	\$0	\$0	\$24,235	\$24,235	\$24,235
Governance, Strategy (excluding scenario analysis), Risk management	\$344,588	\$192,969	\$344,588	\$0	\$192,969	\$192,969	\$192,969
Strategy - scenario analysis only	\$126,859	\$63,430	\$126,859	\$0	\$63,430	\$63,430	\$63,430
Targets and goals	\$103,483	\$56,916	\$103,483	\$0	\$56,916	\$56,916	\$56,916
GHG emissions metrics ²	\$159,492	\$70,176	\$159,492	\$0	\$0	\$70,176	\$70,176
Attestation of Scope 1 and Scope 2 emissions disclosure ³	\$0	\$52,685	\$0	\$0	\$0	\$0	\$52,685
Annual cost savings per registrant			\$1,261,273	\$0	\$732,687	\$802,864	\$855,549
Total annual cost savings⁴			\$682,348,465	\$0	\$396,383,739	\$434,349,183	\$462,851,768

¹ For further information on savings in initial and annual (ongoing) costs, *see supra* section IV.C.1.a.

² Non-exempt AFs are required to comply with the GHG emissions disclosure requirement beginning their third fiscal year of compliance with the Final Rules. *See* Adopting Release, section II.O and section II.H.

³ Under the Final Rules, non-exempt AFs are required to obtain limited assurance beginning the third fiscal year after compliance with the GHG emissions disclosure requirements. *See* Adopting Release, section II.O and section II.I.

⁴ The total annual cost savings are calculated by multiplying the annual cost savings per registrant by 541, the estimated number of non-exempt AFs in 2025.

⁵ All numbers have been rounded to the nearest whole number.

Table 11. Estimated Annual Monetized Cost Savings for SRCs, EGCs, and NAFs.³
(3,877 registrants in 2025)

Rescinded Requirements¹	Savings in Initial Costs	Savings in Annual Costs	Time 0	Years 1 - 3	Years 4 - 10
Financial statement effects disclosures	\$526,850	\$395,138	\$526,850	\$0	\$395,138
Incremental audit fees	\$0	\$24,235	\$0	\$0	\$24,235
Governance, Strategy (excluding scenario analysis), Risk management	\$344,588	\$192,969	\$344,588	\$0	\$192,969
Scenario analysis only	\$126,859	\$63,430	\$126,859	\$0	\$63,430
Targets and goals	\$103,483	\$56,916	\$103,483	\$0	\$56,916
GHG emissions	\$0	\$0	\$0	\$0	\$0
Attestation of Scope 1 and Scope 2 emissions disclosure	\$0	\$0	\$0	\$0	\$0
Annual cost savings per registrant			\$1,101,780	\$0	\$732,687
Total annual cost savings²			\$4,271,602,343	\$0	\$2,840,628,018

¹ For further information on savings in initial and annual (ongoing) costs, see *supra* section IV.C.1.a.

² The total annual cost savings are calculated by multiplying the annual cost savings per registrant by 3,877, the estimated number of SRCs, EGCs, and NAFs in 2025.

³ All numbers have been rounded to the nearest whole number.

Table 12. Total Estimated Annual Monetized Cost Savings¹
(all 6,766 registrants)

	Annual Monetized Cost Savings								
	Time 0	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6 - 7	Years 8 - 9	Year 10
LAFs	\$2,961,468,013	\$0	\$1,720,349,390	\$1,885,123,625	\$1,885,123,625	\$1,885,123,625	\$2,008,828,005	\$2,008,828,005	\$2,256,236,765
Non-exempt AFs	\$682,348,465	\$0	\$0	\$396,383,739	\$396,383,739	\$434,349,183	\$434,349,183	\$462,851,768	\$462,851,768
SRCs, EGCs, and NAFs	\$4,271,602,343	\$0	\$0	\$0	\$2,840,628,018	\$2,840,628,018	\$2,840,628,018	\$2,840,628,018	\$2,840,628,018
Combining Total	\$7,915,418,821	\$0	\$1,720,349,390	\$2,281,507,364	\$5,122,135,382	\$5,160,100,825	\$5,283,805,205	\$5,312,307,790	\$5,559,716,550

1 All numbers have been rounded to the nearest whole number.

¹ All numbers have been rounded to the nearest whole number.

b. Present Values and Annualized Values of Aggregate Monetized Benefits and Costs

Consistent with the requirements of Executive Order 12866, the Commission reports estimated total monetized benefits for all affected entities in two additional ways specified in OMB Circular A–4.³⁵⁸ The two presentations are intended to address the fact that the various benefits and costs of the proposed rescission would not accrue at the same point in time; rather, benefits and costs that accrue sooner are

generally more valuable than those that occur later in time.³⁵⁹ As discussed above, we are not able to monetize costs, and as a result we cannot calculate values for total monetized costs in these presentations.

We report (1) the present values of expected benefits that are monetized in our economic analysis over a 10-year time horizon, starting in 2026, as well as (2) the annualized values over the same time horizon that are derived from the present values.³⁶⁰ The present values and annualized values account for the timing of the benefits through

discounting, which is a procedure that accounts for the time value of money.³⁶¹

Table 13 reports the present values of the aggregate monetized benefits from Table 12, combining initial and annual monetized benefits. The analysis uses annual real discount rates of 3 percent and 7 percent over a 10-year time horizon, starting in 2026.³⁶² We estimate that the present value of total monetized benefits is \$42,254,086,329 using a 3 percent discount rate and \$35,400,350,447 using a 7 percent discount rate.

Table 13: Present Value of Monetized Benefits and Costs over 10 years from 2026 to 2035
(2025 Dollars)

Estimated Effects ¹	3% real discount rate	7% real discount rate
Benefits	\$42,254,086,329	\$35,400,350,447
Costs	Not Monetized	Not Monetized

Notes:

¹ For each discount rate, the present value calculations are based on these assumptions: (i) all one-time monetized benefits (savings in initial costs³⁶³) are incurred immediately and not discounted; and (ii) recurring annual monetized benefits (savings in ongoing costs³⁶⁴) begin to accrue in the year in which affected registrants first comply. In (ii) we assume that monetized benefits occur in a steady stream, and we use a mid-year discount rate.

Table 14 reports annualized monetized benefits using real discount rates of 3 percent and 7 percent over a 10-year horizon.³⁶⁵ The lump sum present values of monetized benefits reported in Table 13 are converted in

Table 14 into a constant stream of annualized benefits over a 10-year time horizon, starting in 2026.³⁶⁶ Annualized benefits may differ from the recurring monetized annual benefits discussed earlier in this Economic Analysis because they incorporate the timing of

benefits, through discounting, and combine one-time and recurring benefits.³⁶⁷

As shown in Table 14, we estimate that annualized total monetized benefits are \$4,880,796,996 per year using a 3 percent discount rate and

³⁵⁸ See E.O. No. 12866, *Regulatory Planning and Review* (Sept. 30, 1993) [58 FR 51735, 51741 (Oct. 4, 1993)] (requiring agencies to provide an analysis of benefits, costs, and regulatory alternatives to OIRA for significant regulatory actions); OMB, Circular A–4, at 31–34, 45 (Sept. 17, 2003) (providing guidance to agencies regarding compliance with E.O. 12866); see also E.O. No. 14215, *Ensuring Accountability for All Agencies* (Feb. 18, 2025) [90 FR 10447, 10448 (Feb. 24, 2025)] (requiring independent regulatory agencies to comply with E.O. No. 12866). In addition, E.O. 14192 requires agencies to provide their best approximation of the total costs or savings associated with each new regulation or repealed regulation consistent with the analyses required by E.O. 12866. See E.O. No. 14192, *Unleashing Prosperity Through Deregulation* (Jan. 31, 2025) [90 FR 9065, 9066 (Feb. 6, 2025)].

³⁵⁹ See Circular A–4, at 32.

³⁶⁰ As explained above, this time horizon represents the period over which the principal benefits and costs that are monetized in the economic analysis are expected to accrue. For the purposes of this analysis, we assume the effective

date of the proposed rescissions, as well as the start year for the analysis’s time horizon, is the present year. The analysis uses calendar years and accounts for the compliance periods included in the release.

³⁶¹ See Circular A–4 at 32 (“The Rationale for Discounting”) & 45 (“Treatment of Benefits and Costs over Time”); see also OIRA, *Regulatory Impact Analysis: A Primer*, at 11 (Aug. 15, 2011), available at https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf (“To provide an accurate assessment of benefits and costs that occur at different points in time or over different time horizons, an agency should use discounting. Agencies should provide benefit and cost estimates using both 3 percent and 7 percent annual discount rates expressed as a present value as well as annualized.”); Harvey S. Rosen & Ted Gayer, *Public Finance* 151 (8th ed. 2008) (defining present value as “the value today of a given amount of money to be paid or received in the future”).

³⁶² This approach is consistent with Circular A–4. See Circular A–4, at 31–34 (stating that, “[f]or regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and

7 percent” discount rates and discussing why those rates are reasonable default rates).

³⁶³ Table 12 reports the one-time monetized benefits as the total monetized savings in initial costs earned at Time 0.

³⁶⁴ Table 12 reports the recurring annual monetized benefits as the total monetized savings in ongoing costs earned in Years 2 to 10.

³⁶⁵ This approach is consistent with the recommended treatment of benefits and costs over time in Circular A–4. See Circular A–4 at 45 (“You should present annualized benefits and costs using real discount rates of 3 and 7 percent”).

³⁶⁶ For each discount rate, the annualized monetized benefits in Table 14 represent the constant annual stream of benefits whose present value over the 10-year horizon equates the corresponding present value in Table 13.

³⁶⁷ The annualized benefits present these values over the 10-year time horizon, starting in the present year, even if recurring annual benefits would actually start to be incurred at a later date due to compliance periods.

\$4,872,558,296 per year using a 7 percent discount rate. Because the annualized benefits are discounted and

include both initial and annual benefits, they should not be compared directly to

the aggregate annual monetized benefits in Table 12.

Table 14: Annualized Aggregate Monetized Benefits and Costs over 10 years from 2026 to 2035 (2025 Dollars)

Estimated Effects ¹	3% real discount rate	7% real discount rate
Benefits	\$4,880,796,996	\$4,872,558,296
Costs	Not Monetized	Not Monetized

Notes:

¹ For each discount rate, the annualized values are calculated by dividing the corresponding present values in Table 13 by the sum of discount factors over the time horizon. The discount factor in year t of the time horizon is equal to $1/(1 + \text{discount rate})^{(t-0.5)}$.

D. Anticipated Effects on Efficiency, Competition, and Capital Formation

The proposed rescission would eliminate the significant compliance costs of the Final Rules for all affected registrants. This is expected to promote the efficiency of capital allocation by reducing the resources that firms devote to compliance activities and allowing those resources to be reallocated toward productive uses that increase firm productivity and long-term growth, such as capital investment, research and development, or operational improvements.³⁶⁸ The magnitude of these efficiency gains would depend in part on the extent to which the proposed rescission would reduce disclosures that provide benefits to investors. For those investors and financial intermediaries who would use climate-related information as part of their investment strategies, the proposed rescission could affect their ability to incorporate such information in their valuation of asset prices and to make informed decisions about whether to buy or sell securities. This could offset some of the efficiency gains associated with the elimination of the Final Rules' compliance costs.

The proposed rescission is expected to affect competition. Compliance costs may function as fixed costs associated with being a public company. Despite the staggered compliance dates and differential requirements, the Final Rules impose on different registrant types, these costs might not necessarily scale proportionally to firm size and thus could impose relatively greater burdens on smaller firms or firms with

fewer resources. By reducing compliance costs, the proposed rescission is expected to lower barriers to entry into public capital markets and reduce the relative disadvantage faced by SRCs or EGCs in accessing public markets. As a result, the proposed rescission could encourage additional firms to become or remain public. The proposed rescission would also reduce the impact of Commission regulations on the market for climate-related third-party services.

The proposed rescission is also expected to affect capital formation by reducing the overall costs associated with accessing and participating in public capital markets. Increased participation in public capital markets may expand the set of investment opportunities available to investors and improve the functioning of capital markets by increasing market liquidity and depth. Increased competition among firms seeking investment may encourage these firms to operate more efficiently, improve corporate governance, and pursue growth opportunities in order to attract investors. Such effects would contribute to more efficient capital allocation and greater capital formation. Investors and financial intermediaries who would use climate-related information as part of their investment strategies could, however, require greater compensation for increased uncertainty or information asymmetries about climate-related matters, which could increase some registrants' cost of capital.

E. Reasonable Alternatives

We considered whether a reasonable alternative would be rescinding only

some of the Final Rules, or amending them so that they apply to a smaller subset of registrants or in more limited circumstances. We preliminarily concluded that these approaches would not be reasonable due to concerns regarding lack of legal authority, the interconnectedness of the Final Rules, and the inappropriateness and burden of the Commission issuing disclosure rules focused specifically on climate-related matters, as discussed in further detail in sections III.B and III.C. To the extent we were to retain some aspects of the Final Rules and/or narrow their scope, there would be a reduction in potential benefits (in the form of cost savings) for registrants as compared to the benefits of fully rescinding the Final Rules. Similarly, there would be a reduction in potential costs (in the form of less comprehensive, standardized, and centralized climate-related disclosure) compared to the costs of fully rescinding the Final Rules for those investors who would use this information as part of their investment strategies. We invite comment on possible reasonable alternatives that would achieve the goals identified in this release.

F. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed rescission of the Final Rules, and whether the proposed rescission, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual

³⁶⁸ See *supra* note 287.

support for their views, in particular, on costs and benefits estimates.

Specifically, we seek comment with respect to the following questions:

- Are there any costs and benefits to any entity that are not identified or mischaracterized in the above analysis?

- Are there any effects on efficiency, competition, and capital formation that are not identified or mischaracterized in the above analysis?

- Are there any sources of data that could provide a more precise estimation of the potential cost savings that may accrue to registrants if the Final Rules are rescinded as proposed?

- Are there any sources of data available that could be used to quantify investors' costs of not having access to the standardized and centralized climate-related disclosures upon the rescission of Final Rules?

- We assume in the above analysis of aggregate monetized benefits and costs that due to the Commission's stay order registrants have yet to incur any initial costs of complying with the Final Rules. Is this characterization correct? If registrants have already incurred some of the implementation costs, what would these costs be? Please provide supportive data to the extent available.

- We calculate total annual costs savings assuming that the annual cost savings per affected registrant apply to all registrants. We also note that actual cost savings could vary significantly

across registrants based on a number of factors, such as a registrant's size, industry, business model, the complexity of the company's corporate structure, existing climate-related disclosure practices, and internal expertise.³⁶⁹ Is this characterization correct? We would be interested in receiving estimates and data concerning these factors.

- Would any data sources allow these cost savings estimates to be apportioned to separate provisions? Furthermore, how would these cost savings estimates vary across time horizons? For example, the first year of implementation may come with higher start-up costs while subsequent years may come with lower costs.

V. Paperwork Reduction Act

In the Adopting Release,³⁷⁰ the Commission noted that certain provisions of our rules and forms that would be affected by the Final Rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").³⁷¹ The titles for the affected collections of information are:

- Form S-1 (OMB Control No. 3235-0065);

³⁶⁹ See *supra* section IV.C.1.a and notes 295 and 296.

³⁷⁰ See Adopting Release at 21894.

³⁷¹ See 44 U.S.C. 3501 *et seq.*

- Form F-1 (OMB Control No. 3235-0258);

- Form S-4 (OMB Control No. 3235-0324);

- Form F-4 (OMB Control No. 3235-0325);

- Form S-11 (OMB Control No. 3235-0067);

- Form 10 (OMB Control No. 3235-0064);

- Form 20-F (OMB Control No. 3235-0288); and

- Form 10-K (OMB Control No. 3235-0063).

The Commission further estimated incremental and aggregate increases in paperwork burden resulting from the Final Rules and set forth the requested change in paperwork burden with respect to each of the above collections of information that it intended to submit to OMB for review in accordance with the PRA.³⁷² Because the proposed amendments would rescind the Final Rules in their entirety, we expect that the proposed amendments would reduce the paperwork burdens with respect to each of the above collections of information by the same amount that the Commission estimated they would increase under the Final Rules. The following PRA Table 1 replicates the requested change in paperwork burden from the Adopting Release:

³⁷² See Adopting Release at 21894–21908.

PRA Table 1. Requested Change in Paperwork Burden from the Adopting Release

Form	Current Burden			Program Change			Requested Change in Burden		
	Current Annual Responses	Current Internal Burden Hours	Current External Cost Burden	No. of Affected Responses	Change in Internal Burden Hours	Change in External Costs (Professional and Assurance Costs)	Annual Responses	Internal Burden Hours	External Cost Burden
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H) = (B) + (E)	(I) = (C) + (F)
Form S-1	898	141,978	\$261,023,465	289	104,678	\$144,699,408	898	246,656	\$405,722,873
Form F-1	66	26,571	\$48,195,563	22	7,917	\$10,963,412	66	34,488	\$59,158,975
Form S-4	588	560,988	\$1,013,408,069	189	68,539	\$94,743,818	588	629,527	\$1,108,151,886
Form F-4	39	13,999	\$25,520,138	13	4,671	\$6,467,848	39	18,670	\$31,987,986
Form S-11	67	12,101	\$22,185,252	21	7,781	\$10,753,495	67	19,882	\$32,938,747
Form 10	216	10,821	\$19,277,232	69	25,164	\$34,783,765	216	35,985	\$54,060,997
Form 20-F	729	479,303	\$864,800,138	240	87,351	\$120,949,584	729	566,654	\$985,749,721
Form 10-K	8,292	13,988,811	\$2,753,391,779	2,667	2,900,645	\$483,794,305	8,292	16,889,456	\$3,237,186,084
Total		15,234,572	\$5,007,801,633		3,206,746	\$907,155,635		18,441,318	\$5,914,957,268

As noted above, however, on April 4, 2024, the Commission issued an order staying the effectiveness of the Final Rules pending the completion of judicial review (“Stay Order”),³⁷³ and as a result the Final Rules have never gone into effect and will remain stayed at least until final disposition of the litigation in the Eighth Circuit. In light of the Stay Order, the Commission did not submit to OMB the change in paperwork burden that it estimated in the Adopting Release with respect to the above collections of information. The current OMB inventory for the above collections of information, therefore, does not reflect the change in paperwork burden that the Commission estimated in the Adopting Release. As a result, we also do not plan to publish a notice requesting comment on, or submitting to OMB for review, any changes to these collections of information in connection with the proposed rescission. Instead, if the proposed rescission is finalized, the current OMB inventory with respect to the above collections of information will remain accurate, as it will not reflect any changes as a result of the Final Rules. If we do not adopt the proposed rescission and the Stay Order is lifted and the Final Rules become effective, then we will submit to OMB the change in paperwork burden that the Commission estimated in the Adopting Release with respect to the above collections of information.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (“RFA”) ³⁷⁴ requires the Commission, in promulgating rules under section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. We have prepared, and made available for public comment, this Initial Regulatory Flexibility Analysis (“IRFA”) in accordance with section 603 of the RFA.³⁷⁵ This IRFA relates to proposed rescission of the Final Rules, which is described in section III above.

A. Reasons for, and Objectives of, the Proposed Action

We are proposing to rescind the Final Rules in their entirety such that registrants would not be required to

provide certain climate-related information in their registration statements and annual reports, including certain information about climate-related financial risks and certain climate-related financial statements effects. As noted above, we are proposing to rescind the Final Rules because they exceed the scope of the Commission’s statutory authority. In addition, we are proposing to rescind the Final Rules because they are unnecessary and inconsistent with a registrant-specific, materiality-based approach to risk disclosure that best serves the interests of registrants and investors; stray from the Commission’s area of regulatory responsibility; impose substantial costs on public companies and their shareholders that are not justified by the informational benefits that may provide to some investors; and are at odds with the Commission’s policy objectives of facilitating capital formation and promoting public company status. The reasons for, and objectives of, the proposed rescission are discussed in more detail in section III.

B. Legal Basis

We are proposing to rescind the Final Rules under the authority set forth in sections 7, 10, 19(a), and 28 of the Securities Act, as amended, and sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, as amended.

C. Small Entities Subject to the Proposed Amendments

The proposed rescission would affect some issuers that are small entities. The RFA defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”³⁷⁶ For purposes of the RFA, under 17 CFR 240.0–10(a), an issuer, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year and, under 17 CFR 230.157, is also engaged or proposing to engage in an offering of securities that does not exceed \$5 million.³⁷⁷ An investment company,

including a business development company,³⁷⁸ is considered to be a “small business” if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.³⁷⁹ The proposed rescission would apply to a registrant when filing a Securities Act or Exchange Act registration statement or an Exchange Act annual or other periodic report. We estimate that there were approximately 707 issuers³⁸⁰ and 5 business development companies³⁸¹ that may be considered small entities that would be subject to the proposed rescission of the Final Rules.³⁸²

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rescission would not impose any reporting, recordkeeping or other compliance requirements on registrants, including any small entities. The proposed rescission would eliminate any and all reporting, recordkeeping and other compliance requirements under the Final Rules. In the Final Regulatory Flexibility Act analysis included in the Adopting Release, the Commission discussed the economic impact of the Final Rules on smaller entities, stating that smaller entities “may face costs that are proportionally greater as [they] may be less able to bear such costs relative to larger entities” but also noting that it is “difficult to project the economic impact on small entities with precision” given that the impact could vary based on, among other factors, the nature and conduct of their businesses.³⁸³ As noted

Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, Investment Company Act Release No. 35864 (Jan. 7, 2026) [91 FR 1107 (Jan. 12, 2026)] (proposing definitions under the Investment Company Act).

³⁷⁸ Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48)].

³⁷⁹ 17 CFR 270.0–10(a). See *supra* note 377 with respect to proposal addressing the definition of “small organization” and “small business” under the Investment Company Act.

³⁸⁰ This issuer estimate is based on staff analysis of issuers that filed an annual report (*i.e.*, Form 10–K or Form 20–F), excluding BDCs and issuers of asset-backed securities, in calendar year 2025 and had total assets of \$5 million or less on the last day of the fiscal year covered in that annual report.

³⁸¹ This BDC estimate is derived from data reported to the Commission (*e.g.*, Forms 10–Q and 10–K) for the fourth quarter of 2025.

³⁸² These estimates are based on staff analysis of issuers potentially subject to the proposed rescission of the Final Rule, excluding co-registrants, during calendar year 2025. This analysis is based on data from Commission XBRL filings and manual review of filings submitted to the Commission.

³⁸³ See Adopting Release at 21911.

³⁷³ Sec. & Exch. Comm’n, *In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors (Order Issuing Stay)*, Release No. 33–11280 (Apr. 4, 2024); see also *The Enhancement and Standardization of Climate-Related Disclosures for Investors: Delay of Effective Date*, Release No. 33–11280 (Apr. 4, 2024) [89 FR 25804 (Apr. 12, 2024)] (Commission release announcing delay of effective date).

³⁷⁴ 5 U.S.C. 601 *et seq.*

³⁷⁵ 5 U.S.C. 603.

³⁷⁶ 5 U.S.C. 601(6).

³⁷⁷ See 17 CFR 240.0–10(a) and 17 CFR 230.157(a). The Commission has pending proposals addressing the definition of “small organization” and “small business” under the Securities Act, the Exchange Act, and the Investment Company Act of 1940 (“Investment Company Act”) for purposes of the RFA. The Commission encourages commenters to review these proposals to determine whether the proposals might affect their comments on this IRFA. See Filer Status Proposing Release (proposing definitions of these terms under the Securities Act and the Exchange Act); *Amendments to the “Small Business” and “Small Organization” Definitions for*

above, certain of the Final Rules impose costs that might not scale proportionally to firm size and thus could impose relatively greater burdens on smaller firms, including those with resource constraints.³⁸⁴ As such, to the extent the costs of the Final Rules are generally fixed across entities, they would be proportionally more costly for smaller entities subject to them.³⁸⁵ Accordingly, rescinding the Final Rules could result in cost savings for smaller firms that are proportionately greater than such savings for larger firms. We expect the majority of the estimated 712 small entities that would be affected by the proposed rescission to be either an SRC, an EGC or a NAF. In section IV, we estimate that the one-time costs savings per registrant for SRCs, EGCs and NAFs from the proposed rescission would be \$1,101,780 and the annual cost savings per such registrant would be \$0 in Years 1 to 3 and \$732,687 in Years 4 to 10.³⁸⁶ The proposed rescission is discussed in detail in section III above. We discuss the economic impact, including the estimated reduction in compliance costs and burdens, of the proposed rescission in sections IV and V above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed rescission does not duplicate or conflict with other existing Federal rules.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. As we are proposing to rescind the Final Rules in their entirety, we do not believe there are any alternatives that would further minimize the

compliance and reporting requirements of small entities subject to the Final Rules. Nor is there a need to exempt any small entities subject to the Final Rules or provide them with alternative compliance timetables. The proposed rescission would mark a return to the Commission's generally principles-based approach to disclosure of climate-related matters, which uses performance standards based on the concept of materiality.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed rescission;
- The existence or nature of the potential impact of the proposed rescission on small entities discussed in the analysis;
- How the proposed rescission could further lower the burden on small entities; and
- How to quantify the impact of the proposed rescission.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rescission is adopted, and will be placed in the same public file as comments on the proposed rescission.

VII. Congressional Review Act

For purposes of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act),³⁸⁷ the Commission must seek OMB's determination as to whether a final regulation constitutes a "major rule." Under the Congressional Review Act, a

rule is considered "major" where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.³⁸⁸

To help inform OMB's determination as to whether any rescission that results from the proposal would be a "major rule," the Commission solicits comment and data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Other Matters

This action is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866, and has been reviewed by OMB. This action, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

Statutory Authority

Sections 7, 10, 19(a), and 28 of the Securities Act, as amended, and sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, as amended.

By the Commission.

Dated: May 29, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-11091 Filed 6-2-26; 8:45 am]

BILLING CODE 8011-01-P

³⁸⁴ See discussion *supra* section IV.D; see also discussion *supra* section III.C.4.

³⁸⁵ See Adopting Release at 21910.

³⁸⁶ See *supra* Table 11.

³⁸⁷ See 5 U.S.C. chapter 8.

³⁸⁸ See 5 U.S.C. 804(2) (defining "major rule").



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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 Parts 431, 435, 438, et al.

Medicaid Program; Community Engagement Requirement for Certain
Individuals; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 435, 438, 457, and 600

[CMS-2454-IFC]

RIN 0938-AV98

Medicaid Program; Community Engagement Requirement for Certain Individuals

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period (IFC) interprets and implements the community engagement requirement in Medicaid under section 1902(xx) of the Social Security Act. States are required to implement the new requirement no later than January 1, 2027. This IFC specifies the requirements and expectations for States, including the Medicaid applicants and beneficiaries who must demonstrate community engagement as a condition of their eligibility, the types of qualifying activities that satisfy the community engagement requirement, the criteria to meet an exception from the requirement (that is, be deemed compliant), and the criteria to meet a specified exclusion from the requirement. It also specifies requirements for verification of qualifying activities, outreach to affected populations, steps States must take if they determine individuals are noncompliant, and additional operational considerations for States. Finally, this IFC specifies implementation timing and establishes new State reporting requirements.

DATES:

Effective date: These regulations are effective on July 31, 2026.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, by July 31, 2026.

ADDRESSES: In commenting, please refer to file code CMS-2454-IFC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov/docket/CMS-2026-2047>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2454-IFC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2454-IFC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: CMS Medicaid Works, Medicaidworks@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Overview

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs to provide medical assistance to people with limited income and resources. While Medicaid programs are administered by the States, the program is jointly financed by the Federal and State governments. As such, the Centers for Medicare & Medicaid Services (CMS) and State agencies share responsibility for administering and ensuring the overall fiscal and programmatic integrity and effectiveness of the Medicaid program. This joint Federal-State partnership is the cornerstone of Medicaid. Enacted in 1965, Medicaid was created to serve and support vulnerable populations, including: children living in low-income households, caretaker relatives with dependent children, seniors, and individuals with disabilities receiving Supplemental Security Income (SSI). In the 1980s and 1990s, the Medicaid statute was amended to enable coverage of additional services and populations, for example home and community-based services, pregnant women and infants (up to 1 year of age), and higher-income children (aged 6 through 18 under 100 percent of the Federal poverty level). The Patient Protection and Affordable Care Act of 2010, (Pub. L. 111-148, enacted March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010

(Pub. L. 111–152, enacted March 30, 2010), together referred to as the Affordable Care Act (ACA), expanded Medicaid eligibility to include non-pregnant adults with income up to 133 percent of the Federal poverty level (also known as the adult group). Each of these coverage expansions not only grew the number of eligible beneficiaries Medicaid serves, but also contributed, along with benefits expansions and rising health costs generally, to increased Medicaid spending. In fiscal year (FY) 2025, approximately 82.4 million individuals were enrolled in Medicaid, roughly 20 million of whom were enrolled in the adult group.¹ Total State and Federal combined Medicaid spending for FY 2025 was nearly \$1 trillion, with approximately \$200 billion attributable to adult group expenditures.²

Presently, States are not required to provide coverage to the adult group.³ States that have elected to provide coverage to the adult group have primarily done so using State plan authority. The adult group consists of low-income individuals (up to 133 percent of the Federal poverty level) who are age 19 to 64, not pregnant, not entitled to or enrolled in Medicare Part A or B, or described in any other mandatory eligibility groups (for example, parent and caretaker relatives, children, or individuals eligible based on their receipt of SSI). Individuals are determined eligible based on income and household size, State residency, and citizenship and immigration status. Unlike other Federal means-tested public assistance programs such as Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), community engagement or work requirements have not historically been a condition of eligibility in the Medicaid program under title XIX of the Act. However, some States have applied such requirements through a section 1115 demonstration. The community engagement requirement will apply in States that have elected the adult group

through the State plan or that have a section 1115 demonstration that covers a similar population to which the requirement applies. To date, 40 States and the District of Columbia have expanded Medicaid⁴ and will be subject to the new community engagement requirement. States that have partially expanded Medicaid through a section 1115 demonstration and additional States that have applicable individuals (defined later in this rule) eligible to enroll or enrolled in a section 1115 demonstration will also be subject to the new community engagement requirement.⁵

B. Working Families Tax Cut Legislation

Public Law 119–21, which CMS refers to as the Working Families Tax Cut (WFTC) legislation, was signed into law by President Donald J. Trump on July 4, 2025. This landmark legislation includes significant changes in Medicaid and the Children's Health Insurance Program (CHIP) affecting eligibility, program operations, and oversight capabilities. It also establishes new accountability measures for Medicaid and CHIP. Among other changes to Medicaid, section 71119(a) of the WFTC legislation added section 1902(xx) of the Act to establish a community engagement requirement for certain adults applying for or enrolled in Medicaid. This requirement has the potential to empower Medicaid beneficiaries through employment, education, or volunteer service so they can escape isolation and dependency, build confidence, and achieve self-sufficiency and independence. Isolation and loneliness have become an epidemic in the United States, affecting even able-bodied adults who can engage with their communities through work and other activities.^{6 7 8 9} One study

found that lacking social connection is as harmful as smoking 15 cigarettes per day.¹⁰

Moreover, employment has been shown to be an important factor leading to long-term beneficiary health and well-being. Obtaining stable employment provides individuals with reliable income and financial stability, which in turn supports access to safe housing, nutritious food, and other resources necessary for maintaining health.^{11 12} Financial stability can lead to improved living conditions, purchasing healthier foods, and the ability to engage in healthy behaviors.^{13 14} Financial stability has also been linked to reduced chronic conditions, such as cardiovascular risk.^{15 16} Beyond its role in income generation, employment itself has been shown to be an important factor in long-

⁷ Bruce LD, Wu JS, Lustig SL, Russell DW, Nemecek DA. Loneliness in the United States: A 2018 National Panel Survey of Demographic, Structural, Cognitive, and Behavioral Characteristics. *Am J Health Promot*. 2019;33(8):1123–1133. doi: 10.1177/0890117119856551. Epub 2019 Jun 16. PMID: 31203639; PMCID: PMC7323762.

⁸ Shovelstul B, Han J, Germine L, Dodel-Feder D. Risk factors for loneliness: The high relative importance of age versus other factors. *PLOS ONE*. 2020;15. doi: 10.1371/journal.pone.0229087. PMID: 32045467; PMCID: PMC7012443.

⁹ Buecker S, Mund M, Chwastek S, Sostmann M, Luhmann M. Is loneliness in emerging adults increasing over time? A preregistered cross-temporal meta-analysis and systematic review. *Psychological Bulletin*. 2021;147(8):787. doi: 10.1037/bul0000332. PMID: 34898234.

¹⁰ Holt-Lunstad J, Robles TF, Sbarra DA. Advancing social connection as a public health priority in the United States. *Am Psychol*. 2017;72(6):517–530. doi: 10.1037/amp0000103. PMID: 28880099; PMCID: PMC5598785.

¹¹ Zafar, Q., M.A. Khan, A.Z. Warsi, and L. Iqbal. (2024). "Economic Strain and Recovery Trajectories in Mental Health: The Role of Financial Stability in Mental Health Outcomes." *Review of Applied Management and Social Sciences*, 7(4): 345–358. <https://doi.org/10.47067/ramss.v7i4.385>.

¹² R. Gerdes, T.D. Jackson, R. Roberts, et al. (2026). "Associations Between Employment and Health Outcomes: A Systematic Review of Reviews." *Journal of Occupational Rehabilitation*. <https://doi.org/10.1007/s10926-025-10357-5>.

¹³ R. Chetty, M. Stepner, S. Abraham, et al. (2016). "The association between income and life expectancy in the United States, 2001–2014." *JAMA*. 315(16):1750–1766. <https://doi.org/10.1001/jama.2016.4226>.

¹⁴ Schoufou, J., E. A.L. de Jonge, J. C. Kieft-de Jong, et al. (2018). "Socio-economic indicators and diet quality in an older population" *Maturitas*, Volume 107: 71–77, ISSN 0378–5122. <https://doi.org/10.1016/j.maturitas.2017.10.010>.

¹⁵ Kim, S., B. Lee, M. Park, et al. (2016). "Prevalence of chronic disease and its controlled status according to income level." *Medicine* 95(44):p e5286, <https://doi.org/10.1097/MD.00000000000005286>.

¹⁶ Brownell, N., Z. Boback, J. Nicholas, et al. (2024). "Trends in Income Inequities in Cardiovascular Health Among US Adults, 1988–2018" *American Heart Association Journals*. 17(5). <https://doi.org/10.1161/CIRCOUTCOMES.123.010111>.

¹ CMS, *Fiscal Year 2027: Justification of Estimates for Appropriations Committees*. <https://www.cms.gov/files/document/fy-2027-justification-estimates-appropriations-committees.pdf>.

² Medicaid Budget and Expenditure System (MBES) data source updated with FY2025 data as of the June 2026 IFC publication date. Available at <https://data.medicaid.gov/dataset/5b19d1d4-ae43-5fcd-ba14-3cecd99f473f> and <https://data.medicaid.gov/dataset/00505e90-f8ac-5921-b12f-5e23ba7ffc3f>.

³ While the ACA established the adult group as a mandatory eligibility group, the U.S. Supreme Court decision, *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), effectively made coverage of this eligibility group voluntary for States.

⁴ See: CMS, *Adult Coverage Expansion* (December 1, 2023), available at <https://www.medicaid.gov/medicaid/program-information/downloads/medicaid-expansion-state-map.pdf>.

⁵ NOTE: This document contains links to non-United States Government websites. We are providing these links because they contain additional information relevant to the topic(s) discussed in this document or that otherwise may be useful to the reader. We cannot attest to the accuracy of information provided on the cited third-party websites or any other linked third-party site. We are providing these links for reference only; linking to a non-United States Government website does not constitute an endorsement by CMS, HHS, or any of their employees of the sponsors or the information and/or any products presented on the website. Also, please be aware that the privacy protections generally provided by United States Government websites do not apply to third-party sites.

⁶ Cigna Corporation. *The Loneliness Epidemic Persists: A Post-Pandemic Look at the State of Loneliness among U.S. Adults*. 2021. <https://newsroom.thecignagroup.com/all-stories?item=446>.

term beneficiary health and well-being. Evidence indicates that obtaining and maintaining stable employment is associated with improved physical and mental health outcomes and greater overall well-being, while unemployment and unstable work are linked to poorer health outcomes.^{17 18 19 20} Evidence from numerous studies show that the link between health and work is intrinsic and bi-directional whereby work is associated with healthier outcomes, and better health is associated with increased employment. Thus, a well-designed community engagement requirement may benefit individuals so that they are not dependent, demoralized, or stuck in situations that hinder their economic, physical, and mental state.

Section 71119(d) of the WFTC legislation directs CMS to publish an IFC no later than June 1, 2026, for the purpose of implementing the community engagement requirement. As directed, this IFC implements section 71119 of the WFTC legislation, including 1902(xx) of the Act.

Demonstrating community engagement as a condition of Medicaid eligibility is not an entirely new policy for the Medicaid program. Under President Trump's 2017 to 2021 presidential term, we approved section 1115 demonstration projects in 13 States²¹ that conditioned Medicaid eligibility, for certain individuals, on compliance with a community engagement requirement. These section 1115 demonstrations were intended to test and evaluate approaches that required work or community engagement as a condition of eligibility, coverage, additional or enhanced

benefits, or reduced premiums or cost sharing. The demonstrations aimed to produce improved health and well-being by increasing the number of beneficiaries who were employed or engaged in other activities such as volunteering or education. Due to litigation and the subsequent Administration's withdrawal of approved authority for those States that had previously approved section 1115 demonstration authority to implement their community engagement programs, Georgia and Arkansas were the only two States that launched programs. Georgia is the only State that continues to operate a community engagement program as a condition of Medicaid eligibility for certain adults. This early implementation experience provides insight into operational considerations, indicating that beneficiary awareness, clarity of requirements, and the accessibility of reporting mechanisms, as well as overall administrative complexity, can influence participation and compliance.^{22 23 24 25}

In this IFC, we implement section 1902(xx) of the Act premised on what we learned from the previously approved section 1115 demonstration projects, permitting States to retain flexibility for their programs where possible, balancing the benefits of State flexibility with the potential costs, such as those associated with systems and operations, and promoting alignment with other health and social service programs, such as SNAP, while also adhering to the letter of the law. This IFC also seeks to increase program integrity by requiring State use of data and information that can ensure that State Medicaid eligibility determinations are auditable and that we have the data needed to exercise

appropriate oversight of State implementation of the community engagement requirement. To help defray operational costs and streamline operational workflows, this IFC relies and builds upon existing statutory and regulatory requirements when possible, including existing requirements for Medicaid, SNAP, TANF, the Internal Revenue Service (IRS), and Health Insurance Exchanges.

The new requirement at section 1902(xx) of the Act requires individuals to engage in qualifying community engagement activities like work or education. The law also requires disenrollment of noncompliant individuals from Medicaid. This requirement will bring Medicaid in line with other public benefit programs, like SNAP and TANF, which have similar work requirements to support beneficiaries on a path to self-sufficiency. In SNAP and TANF, noncompliance with work requirements has implications for eligibility in those programs. For SNAP, noncompliance can result in ineligibility for time-limited participants after 3 months within a 36-month period. For TANF, noncompliance can result in the reduction or termination of cash benefits. As specified in section 1902(xx) of the Act for Medicaid, noncompliance would result in Medicaid disenrollment from or denial of eligibility for the adult group or section 1115 demonstrations that include applicable individuals; however, the individual can re-apply at any time and will be subject to the procedures for assessing compliance at application.

Consistent with our understanding of the Congress' directive through passage of the WFTC legislation, for able-bodied adults (generally those who enroll in the adult group), Medicaid should be a short-term hand up, not a lifetime handout. Implementing the community engagement requirement, we believe, will assist in prioritizing coverage for Medicaid's most vulnerable populations such as seniors, individuals with disabilities, pregnant women, and children while empowering able-bodied individuals through community engagement. Section 1902(xx) of the Act and this IFC are applicable to all States and the District of Columbia that elect to provide coverage to the adult group under the State plan or to certain individuals covered through certain section 1115 demonstrations as defined in statute and explained in the preamble of this IFC. Section 1902(xx) of the Act and this IFC do not apply to the territories. States that provide Medicaid coverage to applicable individuals as

¹⁷ Han, W.-J. (2024). "How longitudinal employment patterns shape health as individuals approach middle adulthood—US NLSY79 cohort." *PLOS ONE*, 19(4), e0300245. <https://doi.org/10.1371/journal.pone.0300245>.

¹⁸ Virtanen M, Kivimäki M, Joensuu M, Virtanen P, Elovainio M, Vahtera J. Temporary employment and health: a review. *Int J Epidemiol*. 2005 Jun;34(3):610–22. doi: 10.1093/ije/dyi024. Epub 2005 Feb 28. PMID: 15737968.

¹⁹ Kim TJ, von dem Knesebeck O. Perceived job insecurity, unemployment and depressive symptoms: a systematic review and meta-analysis of prospective observational studies. *Int Arch Occup Environ Health*. 2016 May;89(4):561–73. doi: 10.1007/s00420-015-1107-1. Epub 2015 Dec 29. PMID: 26715495.

²⁰ Gerdes R, Jackson TD, Roberts R, Lytvayak E, Deibert D, Dennett L, Burton AK, Gross DP, Els C, Doroshenko A, Hagtvedt R, Straube S. Associations Between Employment and Health Outcomes: A Systematic Review of Reviews. *J Occup Rehabil*. 2026 Jan 6. doi: 10.1007/s10926-025-10357-5. Epub ahead of print. PMID: 41493509.

²¹ Arizona, Arkansas, Georgia, Indiana, Kentucky, Maine, Michigan, Nebraska, New Hampshire, Ohio, South Carolina (two 1115 demonstrations), Utah, and Wisconsin.

²² Centers for Medicare & Medicaid Services (CMS). (2025, December 8). Requirements for states to establish Medicaid community engagement requirements for certain individuals (CMCS Informational Bulletin: Section 71119 of the Working Families Tax Cut Legislation, P.L. 119–21). <https://www.medicaid.gov/federal-policy-guidance/downloads/cib12082025.pdf>.

²³ Medicaid and CHIP Payment and Access Commission (MACPAC). (2026, April 9). Implementing community engagement requirements in Medicaid. <https://www.macpac.gov/wp-content/uploads/2026/04/01-April-Slides-Implementing-Community-Engagement-Requirements-in-Medicaid.pdf>.

²⁴ Centers for Medicare & Medicaid Services (CMS). (2021, March 17). Letter to Arkansas regarding Arkansas Works demonstration. <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ar-works-ca2.pdf>.

²⁵ Georgia Department of Community Health. (2025, April 28). Georgia section 1115 demonstration waiver extension request. <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ga-pathway-pa-04282025.pdf>.

defined in section 1902(xx) of the Act generally must comply with the community engagement requirement no later than January 1, 2027; States may implement the community engagement requirement earlier, provided that certain conditions are met.

This IFC implements the statutory definition of applicable individuals, the statutory term for the Medicaid applicants and beneficiaries who must demonstrate community engagement as a condition of their Medicaid eligibility. With certain exclusions specified in the statute, applicable individuals are those who are eligible for, or enrolled under, the State plan adult group described in section 1902(a)(10)(A)(i)(VIII) of the Act and § 435.119. In addition, applicable individuals are those who are eligible to enroll or are enrolled under a waiver of the State plan authorized under section 1115 of the Act that provides coverage that meets minimum essential coverage (MEC) requirements described in section 5000A(f)(1)(A) of the Internal Revenue Code (the Code) and who have attained the age of 19 and are under 65 years of age, are not pregnant, and not entitled to, or enrolled, for benefits under part A of title XVIII, or enrolled for benefits under part B of title XVIII, and are not otherwise eligible to enroll under such plan.

This IFC specifies the steps States must take when they are unable to verify whether an applicable individual has met the community engagement requirement when applying for Medicaid, as part of a renewal of Medicaid eligibility, and, if elected by the State, during a more frequent verification. This includes providing the individual with a notice of noncompliance and 30 calendar days to demonstrate a satisfactory showing. This IFC specifies that the notice of noncompliance must inform the individual how they may make a satisfactory showing to demonstrate compliance or that the individual should not be subject to the requirement as well as how the individual can reapply for coverage if they are disenrolled.

The IFC also specifies when and how States must verify an applicable individual's compliance with the community engagement requirement and whether an individual meets an exception (that is, will be deemed compliant) or exclusion from the requirement. This includes the use of data sources to verify community engagement activity consistent with section 1902(xx) of the Act and when to request additional information from the individual.

This IFC specifies outreach and notice requirements for States that are integral to implementing the community engagement requirement; how individuals can meet the community engagement requirement, which require that affected individuals work or engage in other educational or community service activities for at least 80 hours a month; how applicants and beneficiaries will be able to demonstrate compliance and how States will verify compliance; and what steps States must take in the event of noncompliance. This IFC also specifies when States will have flexibility in implementing the community engagement requirement.

This IFC addresses additional considerations for States and implications of the community engagement requirement for other existing enrollment pathways, such as presumptive eligibility, as well as eligibility for demonstration projects authorized under section 1115 of the Act. This IFC also specifies the new State data and reporting requirements for monitoring purposes. In addition, this IFC outlines considerations for States that elect to delegate certain functions to their managed care plans as well as implications of the conflict-of-interest requirement for managed care plans and other contractors. Finally, this IFC specifies the situations and steps for a State to request a temporary good faith effort exemption from compliance with timely implementation of the community engagement requirement.

C. Severability

In this IFC, CMS and HHS establish multiple policies related to the implementation of the community engagement requirement described in section 1902(xx) of the Act. It is our intent that if any provision of this final rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further action, it shall be severable from this IFC, and from rules and regulations currently in effect, and not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances. If any provision is held to be invalid or unenforceable, the remaining provisions which could function independently should take effect and be given the maximum effect permitted by law. Through this rule, we adopt provisions that are intended to and will operate independently of each other, even if each serves the same general purpose or policy goal. Where a provision is necessarily dependent on another, the context generally makes that clear, such

as by a cross-reference to apply the same standards or requirements.

II. Provisions of the Interim Final Rule With Comment Period

Through this IFC, we are adding regulations to Subpart F of part 435 to implement amendments made by section 71119 of the WFTC legislation, that require certain adults who apply for Medicaid or who are enrolled in Medicaid to meet the community engagement requirement. Section 71119(b) of the WFTC legislation made a conforming amendment to section 1902(a)(10)(A)(i)(VIII) of the Act, which describes the eligibility requirements for the adult group. We implement this conforming change by amending § 435.119, which implements Medicaid adult group eligibility, to specify that this eligibility group is subject to the community engagement requirement described at §§ 435.550 through 435.563. Additionally, we establish a basis and scope for the community engagement requirement for applicable individuals at § 435.550, by citing the authority provided by section 1902(xx) of the Act and specifying that these requirements only apply to Medicaid programs operated by one of the 50 States or the District of Columbia (to the extent that a Medicaid program elects to provide coverage to the adult group under the State plan or to certain individuals through certain section 1115 demonstrations, as described in section II.B. of this IFC). Consistent with the definition of State at section 1902(xx)(9)(C) of the Act, the community engagement requirement does not apply to a U.S. territory, regardless of whether it elects to cover the adult group or has a section 1115 demonstration with applicable individuals. We also make additional revisions to certain regulations that are necessary to implement the community engagement requirement outlined in this IFC. These revisions are described in more detail in section II.A. of this.²⁶

²⁶ NOTE: This document contains links to non-United States Government websites. We are providing these links because they contain additional information relevant to the topic(s) discussed in this document or that otherwise may be useful to the reader. We cannot attest to the accuracy of information provided on the cited third-party websites or any other linked third-party site. We are providing these links for reference only; linking to a non-United States Government website does not constitute an endorsement by CMS, HHS, or any of their employees of the sponsors or the information and/or any products presented on the website. Also, please be aware that the privacy protections generally provided by United States Government websites do not apply to third-party sites."

A. Decision to Revise Certain Eligibility and Enrollment Regulations To Implement Community Engagement

Under section 71119 of the WFTC legislation, Congress has directed us to implement a community engagement requirement and directed that any action taken to implement this requirement not be subject to the provisions of 5 U.S.C. 553. Implementation of the community engagement requirement requires ensuring related regulations reflect current and effective policy. Currently, the regulations do not contain current and effective policies related to application requirements, redeterminations of eligibility during periodic renewals, redeterminations of eligibility in between renewals based on a change in circumstances, and timeliness standards to process eligibility and enrollment actions.

Section 71102 of the WFTC legislation precludes CMS from implementing, administering, or enforcing amendments made by provisions of the final rule titled “Medicaid Program; Streamlining the Medicaid, Children’s Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes” (89 FR 22780) (hereinafter referred to as the 2024 Eligibility and Enrollment final rule) for Federal regulations specified in section 71102 of the WFTC legislation until after September 30, 2034. This prohibition renders the amendments made by the 2024 Eligibility and Enrollment final rule to the specified regulatory provisions unenforceable prior to October 1, 2034, effectively suspending these provisions during that period (herein referred to as the section 71102 moratorium).

Many of the regulations amended by the 2024 Eligibility and Enrollment final rule that are now subject to the section 71102 moratorium are necessary to implement the community engagement requirement successfully. For example, section 1902(xx) of the Act, as added by section 71119 of the WFTC legislation, requires States to verify, at renewal, that individuals satisfy the community engagement requirement. However, the regulatory provisions governing renewals are among those suspended by the section 71102 moratorium because the moratorium suspends amendments made by the 2024 Eligibility and Enrollment final rule to § 435.916, which establishes requirements for States to conduct periodic renewals of eligibility. As a result, there are currently no enforceable regulations in effect governing renewals of eligibility

that CMS could cite in implementing the new community engagement requirement.

Accordingly, it would not be feasible to establish an enforceable community engagement requirement where the implementing regulations would need to rely on suspended eligibility and enrollment policies. In addition to renewal requirements, the section 71102 moratorium also suspends regulatory provisions relating to application requirements, procedures for acting on changes in circumstances that may affect eligibility, and timeliness standards for processing eligibility and enrollment actions. Because current and effective Federal regulations no longer comprehensively address these core eligibility and enrollment processes, CMS would be significantly constrained in its ability to implement section 71119 of the WFTC legislation and enforce provisions of the IFC while the moratorium is in effect.

To implement community engagement while the section 71102 moratorium is in effect, it is therefore necessary to restore, for regulations impacted by the section 71102 moratorium, the previous version of the Code of Federal Regulations (CFR) that was in effect prior to the effective date of the 2024 Eligibility and Enrollment final rule. The restoration of the previous version of the CFR for certain provisions will ensure that the regulations reflect current legal authority and CMS policy to support implementation of community engagement while the section 71102 moratorium is in effect. For the period until October 1, 2034, this IFC restores the following regulations as they existed before the 2024 Eligibility and Enrollment final rule: §§ 431.213(d), 431.231(d), 435.907, 435.911(c), 435.912, 435.916, 435.919, 457.340(d)(1), 457.344, and 457.960. We also make a corresponding edit to remove a cross-reference at § 435.1200(e)(1), that would no longer exist, with the revisions to revert to the previous version of the CFR and make conforming changes to affected CHIP regulations, which cross-reference to Medicaid regulations. The changes to these provisions are either necessary to implement the community engagement requirement in this IFC or are conforming changes to the Medicaid and CHIP regulations because of the implications of the revisions to restore the previous version of the CFR. For the period until October 1, 2034, the changes are as follows:

- §§ 431.213(d) and 431.231(d) concerning whereabouts unknown based on returned mail are revised to

reflect the version of the CFR for these paragraphs in effect as of June 2, 2024, as a conforming change to restore regulations that were relocated by the 2024 Eligibility and Enrollment final rule to § 435.919, which is removed as noted in this section.

- § 435.907(c)(4) concerning modalities for States to accept non-MAGI (modified adjusted gross income) application forms is removed, which is affected by the section 71102 moratorium.

- § 435.907(d)(1) and (2) concerning the minimum time for applicants to respond to requests for information, the provision of a reconsideration period at application, and expansion of the prohibition on in-person interviews, are removed because they are affected by the section 71102 moratorium and replaced with § 435.907(d) of the CFR in effect as of June 2, 2024.

- § 435.911(c) is revised to reflect the version of the CFR for this paragraph in effect as of June 2, 2024, to remove cross-references removed in this IFC, which is affected by the section 71102 moratorium.

- §§ 435.912 concerning timeliness standards and 435.916 concerning redeterminations of eligibility, which are affected by the section 71102 moratorium, are replaced in their entirety with the version of the CFR in effect as of June 2, 2024.

- § 435.919 concerning acting on changes in circumstances and updating contact information, which is affected by the section 71102 moratorium, is removed.

- § 435.1200(e)(1) is amended to remove the phrase “(regarding regularly-scheduled renewals of eligibility) or § 435.919 (regarding changes in circumstances)” as a conforming change because we remove § 435.919 in this IFC.

- § 457.340(d)(1) is revised to reflect the version of the CFR for this paragraph in effect as of June 2, 2024, to conform with revisions to § 435.912.

- § 457.344 is removed to conform with revisions to restore the previous version of the CFR for §§ 435.912 and 435.916 and the removal of § 435.919.

- § 457.960 is revised to conform with changes to reflect the previous version of the CFR because § 457.344 is removed.

In this IFC, we limit revisions to the regulations: (1) to restore the previous version of the CFR for requirements affected by the moratorium, when needed to implement community engagement, and (2) when conforming changes are needed for consistency. At this time, we are not updating the CFR

to restore other regulations²⁷ impacted by section 71102 of the WFTC legislation to their versions in effect prior to the 2024 Eligibility and Enrollment final rule and are not amending the policies in the restored regulations because such action falls outside the scope of the Congress's directive under section 71119 of the WFTC legislation. We do not permanently restore the CFR as such action also falls outside the scope of Congress's directive under section 71119 of the WFTC legislation. Because we modify the CFR to restore the regulations which are necessary to implement the community engagement requirement and sunset the provisions on October 1, 2034, we will follow applicable rulemaking procedures to ensure that policies governing Medicaid and CHIP eligibility and enrollment are implemented and effective on October 1, 2034, replacing the policies scheduled to sunset on that date.

Separately, the regulations that we are updating so that they reflect the versions in effect prior to the 2024 Eligibility and Enrollment final rule are referenced throughout this IFC. In accordance with the changes discussed here, the references to the regulations affected by the section 71102 moratorium in the preamble, regulatory impact analysis, collection of information, and cross-referenced in regulatory text should be interpreted as referring to the prior CFR versions implemented in this IFC.

B. Applicable Individuals

Section 71119(a) of the WFTC legislation amended section 1902 of the Act to add subsection (xx). Section 1902(xx) of the Act requires that “applicable individuals” demonstrate, as a condition of their Medicaid eligibility, “community engagement” (generally, that they work, are enrolled in an educational program, complete community service, participate in a work program, or any combination thereof) for a minimum period of time preceding their Medicaid application and during their Medicaid enrollment. Section 1902(xx)(9)(A)(i) of the Act defines the term “applicable individual” to mean an individual who is not a “specified excluded individual” described in section 1902(xx)(9)(A)(ii) of

the Act (as further discussed in section II.E. of this IFC) and who (1) “. . . is eligible to enroll (or is enrolled) under the State plan under” section 1902(a)(10)(A)(i)(VIII) of the Act; or (2) “. . . is otherwise eligible to enroll (or is enrolled) under a waiver of such plan” and meets the criteria of 1902(xx)(9)(A)(i)(II)(aa) and (bb). In this IFC, we establish a new § 435.551 to implement this statutory definition of applicable individual.

For individuals applying for, or enrolled in, coverage under the State plan, only individuals eligible for or enrolled in the adult group under section 1902(a)(10)(A)(i)(VIII) of the Act (implemented at § 435.119 of the regulations) could be applicable individuals. Individuals eligible for or enrolled in any other mandatory or optional State plan eligibility groups are not applicable individuals subject to the community engagement requirement. For example, individuals enrolled under the State plan in the following groups are not applicable individuals: the mandatory group for parents and other caretaker relatives (under section 1931 of the Act and implemented at § 435.110 of the regulations); and the optional group for individuals under age 65 with incomes exceeding 133 percent of the Federal poverty level (FPL) (under section 1902(a)(10)(A)(ii)(XX) of the Act and implemented at § 435.218 of the regulations). This includes individuals eligible for or enrolled in mandatory and optional State plan groups that are modified through a waiver authority under section 1115(a)(1) of the Act, as their underlying eligibility authority is through the State plan.

Regardless of whether a State covers the adult group under the State plan, a person could still be an applicable individual if that person is “otherwise” eligible for or enrolled in Medicaid under certain section 1115 demonstrations. Section 1902(xx)(9)(A)(i)(II) of the Act specifies that an applicable individual includes an individual “who is otherwise eligible to enroll (or is enrolled) under a waiver of such plan that provides coverage that is equivalent to minimum essential coverage [(MEC)]²⁸. . . and has attained the age of 19 and is under 65 years of age, is not pregnant, is not entitled to, or enrolled for, benefits under part A of

title XVIII, or enrolled for benefits under part B of title XVIII, and is not otherwise eligible to enroll under such plan.” To be an applicable individual in this case, an individual must be (1) eligible for, or enrolled in, coverage that meets MEC requirements under demonstration expenditure authority under section 1115(a)(2) of the Act (and not under the State plan), and (2) at least 19 years of age and under 65 years of age, not pregnant, not entitled to or enrolled for benefits under Medicare part A or part B, and not otherwise eligible to enroll under the State plan. If a State does not cover the adult group under the State plan and does not otherwise provide coverage to a population described in section 1902(xx)(9)(A)(i)(II) of the Act under section 1115(a)(2) expenditure authority, the State will not have any applicable individuals who will be subject to the community engagement requirement. However, States that cover the State plan adult group might *also* have a section 1115 demonstration population that meets the criteria described above and, therefore, also have applicable individuals under the demonstration.

We do not consider section 1915(b) waivers or section 1915(c) waivers to be “a waiver of such plan” for purposes of section 1902(xx)(9)(A)(i)(II) of the Act. This is because sections 1902(xx)(9)(A)(i)(I) and (II) of the Act define groups of individuals who are “eligible to enroll” or are “enrolled” under either the State plan or a waiver of the plan, whereas section 1915(b) and (c) waivers give States the flexibility to waive certain requirements to utilize managed care and long-term care delivery systems for individuals enrolled under the State plan, rather than enabling enrollment in Medicaid coverage for individuals who would not otherwise be eligible to enroll in Medicaid under the State plan.

Similarly, we do not interpret section 1902(xx)(9)(A)(i)(II) of the Act to describe section 1115 demonstrations that provide only section 1115(a)(1) waiver authority or that include section 1115(a)(2) expenditure authority only for specific services (versus eligibility) for groups covered under the State plan. Individuals whose coverage is affected by these kinds of section 1115 demonstrations are eligible to enroll (or are enrolled) in Medicaid through the State plan, not through demonstration expenditure authority. Individuals who are eligible to enroll (or are enrolled) in Medicaid under the State plan would be applicable individuals only if they are eligible for or enrolled in the State plan under section 1902(a)(10)(A)(i)(VIII) of the Act (the adult group).

²⁷ For more information on the section 71102 moratorium and how to interpret regulations that remain impacted, see the November 18, 2025, CMCS Informational Bulletin, ““Working Families Tax Cut” Legislation, Public Law 119–21: Summary of Medicaid and Children’s Health Insurance Program (CHIP) Related Provisions,” available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib11182025.pdf>.

²⁸ MEC is defined in section 1902(xx)(9)(A)(i)(II)(aa) of the Act as follows: “as described in section 5000A(f)(1)(A) of the Internal Revenue Code of 1986 and as determined in accordance with standards prescribed by the Secretary in regulations.” CMS does not read the provision in the statute to in any way change the current process for determining whether Medicaid coverage in section 1115 demonstrations is MEC.

Due to the complex and often unique nature of section 1115 demonstrations and to support our rulemaking efforts, we are engaged in a systematic review and analysis of approved section 1115(a)(2) expenditure authority in demonstrations that create an eligibility pathway for individuals who are not eligible under the State plan to determine which demonstrations cover individuals who could be subject to the community engagement requirement. Based on our review thus far, many section 1115(a)(2) expenditure authority demonstration populations do not meet the definition of an applicable individual. For example, a number of demonstrations provide coverage only of limited Medicaid benefits, such as only family planning benefits to a group eligible only under section 1115(a)(2) expenditure authority. This coverage does not meet MEC requirements, and thus the community engagement requirement would not apply to individuals applying for or enrolled in coverage under these demonstrations.

In other instances, a demonstration could cover a population under section 1115(a)(2) expenditure authority that is not eligible under the State plan and generally meets the criteria in section 1902(xx)(9)(A)(i)(II) of the Act, but the demonstration also includes an eligibility criterion under which anyone eligible for the demonstration coverage would always be a specified excluded individual, as discussed in section II.E. of this IFC. For example, some section 1115(a)(2) expenditure authority demonstrations create an eligibility pathway for coverage that is equivalent to MEC for a population of individuals between age 19 and 64, who are not pregnant, not entitled to or enrolled for Medicare, and who are not otherwise eligible to enroll in Medicaid under the State plan, but who meet an institutional level of care to receive home and community-based services (HCBS) through the expenditure authority. Any individual in this population would meet the definition of an applicable individual at section 1902(xx)(9)(A)(i)(II) of the Act, except that they would be a specified excluded individual because they would be medically frail or otherwise have special medical needs (under the definition established in this rule at § 435.554(c)(5)). Therefore, individuals in this demonstration population would not be subject to the community engagement requirement.

Additionally, our review identified several demonstrations providing Medicaid eligibility under section 1115(a)(2) expenditure authority to populations generally meeting the

definition of an applicable individual in section 1902(xx)(9)(A)(i)(II) of the Act, but in which not all individuals would always meet the criteria of a specified excluded individual or a mandatory exception for certain populations. These demonstration populations could be subject to the community engagement requirement.

As part of our section 1115 demonstration review and approval process, we will evaluate proposals which seek to provide Medicaid eligibility under section 1115(a)(2) expenditure authority to a population not eligible under the State plan to determine if the community engagement requirement might apply to the demonstration population.

C. Demonstrating Community Engagement

Section 1902(xx)(2) of the Act specifies the ways by which an applicable individual may demonstrate community engagement. See section II.B. of this IFC for a discussion of the definition of an “applicable individual.” The Secretary is authorized under section 1902(xx)(2) of the Act to establish criteria for determining whether an applicable individual has demonstrated community engagement. New § 435.552 implements section 1902(xx)(2) of the Act.

Under section 1902(xx)(2) of the Act, an applicable individual demonstrates community engagement for a month if, for such month, the individual:

- Works not less than 80 hours;
- Completes not less than 80 hours of community service;
- Participates in a work program for not less than 80 hours;
- Is enrolled in an educational program at least half-time;
- Engages in any combination of the aforementioned activities for a total of not less than 80 hours;
- Has a monthly income that is not less than the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act of 1938 (Federal minimum wage) multiplied by 80 hours; or
- Is a seasonal worker (as described in section 45R(d)(5)(B) of the Code of 1986) and has an average monthly income over the preceding 6 months that is not less than the applicable Federal minimum wage multiplied by 80 hours.

In this section, we describe each of the options for demonstrating community engagement in further detail, first explaining what constitutes work, community service, a work program, and an educational program. To simplify administration, we have

endeavored to align our definitions of the activities and income requirements with existing statutory or regulatory requirements in Medicaid and in other benefit programs such as SNAP and the TANF program. Then, we explain what constitutes enrollment status in an educational program and how hours across activities can be combined. We conclude this section by explaining additional ways, as described in the statute, in which an applicable individual can demonstrate community engagement, including by computing monthly income or average monthly income for seasonal workers. We note that the statute requires States to make all of the options for demonstrating community engagement listed in section 1902(xx)(2) of the Act available. States are not permitted to make only a subset of these options available, such as by allowing individuals to demonstrate community engagement through participation in a work program but not by completing community service. Applicable individuals must be allowed to demonstrate community engagement by meeting any one or more of the conditions described at new § 435.552.

1. Work

Under section 1902(xx)(2)(A) of the Act, an applicable individual demonstrates community engagement if the individual works not less than 80 hours in such month. At new § 435.552(b), we define work to mean: work in exchange for money, work in exchange for goods or services (“in-kind” work), and unpaid work other than community service (as defined and discussed below). Applicable individuals can work in one or more ways, separately or combined, to meet the community engagement requirement. Work in exchange for money can include many occupations. However, an individual does not need to be an employee of a company or organization to meet this definition. Section 1902(xx)(2) of the Act does not specify particular work arrangements; rather, it requires that individuals engage in meaningful activity in the community, including working. Many individuals work for themselves by being self-employed due to starting a business, owning a business, or as an independent contractor, and these activities meet the definition of work at § 435.552(b).

In-kind and unpaid work also represent ways in which an individual can engage in meaningful activity in the community. With a broad definition of work, we recognize the reality of the wide array of work arrangements and seek to enable individuals participating

in such arrangements to demonstrate community engagement. There are jobs in various sectors, ranging from domestic service to specialized facility management, where individuals may choose to accept in-kind compensation in the form of non-monetary benefits like housing, meals, or utilities. For example, an individual who performs duties as a property manager or building superintendent may receive compensation in the form of free or reduced rent. Under our definition of work at § 435.552(b), the hours the individual spends performing these duties would count toward meeting the 80-hour requirement.

Unpaid and in-kind work are also a way for individuals to obtain necessary job skills and gain work experience prior to attaining paid employment. Our definition of work, which does not require that an individual receive payment for duties or activities performed for the benefit of another individual or entity, accommodates situations where individuals engage in unpaid work, including, but not limited to, unpaid work as part of a trial period when applying for a job, or unpaid work, such as an internship, to gain experience for a job or industry. In contrast to community service (discussed in section II.C.2. of this IFC), unpaid work can benefit an individual or private entity and does not need to benefit the community. For example, an individual can intern at a private office to gain experience with bookkeeping and records management, but this internship would not be community service.

The unpaid work of a family caregiver as defined at § 435.554(a), who does not qualify as a specified excluded individual, can also qualify as unpaid work under the definition at § 435.552(b). We recognize that not all people who meet the definition of a family caregiver will qualify as a specified excluded individual under section 1902(xx)(9)(A)(ii)(III) of the Act, which this IFC implements at § 435.554. Caregiving hours that are below the 80-hour caregiving threshold in § 435.554(c)(3)(i)(C) and are provided by a family caregiver as defined at § 435.554(a) to a dependent child 13 years of age and under or a disabled individual, with whom he or she does not reside and is not related to, would count toward demonstrating community engagement. For additional details about implementation of the family caregiver definition and the criteria to qualify as a specified excluded individual, see sections II.E.3.d. and h. of this IFC.

Including in-kind and unpaid work in the definition of work generally aligns with the Food and Nutrition Service's (FNS) regulatory definition of working for SNAP at 7 CFR 273.24, which implements the work requirement in title VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) enacted on August 22, 1996 (PRWORA). Similar to section 1902(xx)(2)(A) of the Act, PRWORA also does not define work. FNS developed the definition to include in-kind and unpaid work.²⁹ We are adopting a similar definition for purposes of Medicaid community engagement, in keeping with our principle of aligning with other existing public benefit work requirements to the extent possible.

States will need to verify work hours when determining compliance under § 435.552(a). Additional information about verification is discussed in section II.I.6.a. of this IFC.

2. Community Service

Under section 1902(xx)(2)(B) of the Act, an applicable individual demonstrates community engagement if the individual completes not less than 80 hours of community service in such month. SNAP does not specifically include the term “community service” in its work requirements (SNAP general work requirements are defined in section 6(d)(1) of the Food and Nutrition Act of 2008 and SNAP time limit work requirements, formerly known as the for Able-Bodied Adults without Dependents work requirements, are defined in section 6(o)(2) of such Act). However, TANF defines community service programs at 45 CFR 261.2(h), as structured programs and embedded activities in which individuals perform work for the direct benefit of the community under the auspices of public or nonprofit organizations.³⁰ In keeping

²⁹ FNS's definition of unpaid work states that the unpaid work must be verified under standards established by the State agency. Our definition does not include this verification language because Medicaid has its own specific verification requirements that must be followed for community engagement. Section II.I.6.a. of this IFC includes information about verification requirements for unpaid work.

³⁰ While the Administration for Children and Families (ACF) definition of community service program uses the term “work”, ACF states in the preamble of the 2006 Reauthorization of the Temporary Assistance for Needy Families Program Interim final rule with request for comments, that community service programs are an unpaid work activity when discussing documentation requirements for unpaid work activities: “[o]ther unpaid work activities, including work experience, community service programs. . .”. See: Reauthorization of the Temporary Assistance for Needy Families Program, Medicaid Program; Premiums and Cost Sharing 71 FR 37468 (June 29, 2006). <https://www.federalregister.gov/d/06-5743>.

with our principle of aligning Medicaid community engagement definitions with other benefit programs, we similarly define community service at new § 435.552(b) to mean unpaid work with a structured program that is completed for the direct benefit of the community under the auspices of public or nonprofit organizations (including embedded activities of the program that allow an individual to develop skills necessary to complete community service). While community service under this definition is a type of unpaid work, it counts separately as a qualifying activity and thus is not counted as work.

The TANF definition of community service is more extensive than our definition as it lists examples of fields (such as health, social service, and environmental protection) in which community service activities can be completed. It also includes a supervision requirement. We do not include a list of specific fields in our definition because we do not wish to inadvertently limit States or individuals from seeking community service in emerging fields. For example, technology is a field in which community service could be completed, but it is not included in TANF's definition. In addition, although our definition does not expressly require that qualifying community service activities be supervised, our requirement that community service be completed with a structured program under the auspices of public or nonprofit organizations ensures that the community service activities are monitored and operated with sufficient oversight. This means that an individual cannot complete a community service activity independently of an organization that fits the description in the definition. In addition, in order to meet our requirement that community service must be completed with a structured program, the public or nonprofit organization must provide oversight of the activity and have a process in place to track the community service completed by individuals, including the type of community service activity, dates and hours the community service is completed, and a point of contact who can confirm the hours completed.

Consistent with the TANF definition at 45 CFR 261.2(h), while community service should serve a useful community purpose, we also acknowledge that when completing community service, there can be other activities embedded within the community service work that an individual performs under the auspices

of a public or nonprofit organization. These embedded activities allow an individual to develop necessary skills so that they can complete the community service. Because these activities help an individual complete the community service, we have included them in the definition of community service. For example, such embedded activities could include attending training as part of the community service program, such as attending a computer training class to learn a certain computer skill to provide tech tutoring for seniors. Such training would count towards an individual's community service hours because it is an integral part of the community service that is being provided to the community and it allows the individual to develop the skills needed to complete the community service.

We recognize that community service needs and opportunities vary by State and locality due to different local challenges. States are responsible for determining which activities qualify as community service under the definition at § 435.552(b). In doing so, States will need to assess whether the activity is with a structured program and if the activity directly benefits the community by addressing a community/civic or public need. The activity must also not serve a partisan purpose. For example, community service activities could include volunteering at a food bank, mentoring or tutoring youth, supporting seniors through meal delivery, or cleaning public parks or grounds. Community service activities would not include activities that directly benefit only specific individuals (as opposed to being part of an effort that directly benefits the broader community) or activities that are purely recreational in nature. Examples of activities that do not fall within the definition would include: helping to complete a task for a specific individual that is not performed as part of a wider effort benefiting the broader community (for example, helping a friend move or helping an individual with yard work, versus providing assistance with moving or yard work for an organization that provides that assistance broadly to various members in the community), attending a child's parent teacher conference or school events, or joining a community recreational club (for example, dance or sports club). Campaigning or volunteering for a partisan political candidate or committee would also be excluded activities.

Under the definition at § 435.552(b), community service must be completed with a structured program under the auspices of public or nonprofit

organizations. However, a State must not restrict community service to activities with an organization described in section 501(c)(3) of the Code as tax exempt. Such a narrow interpretation of organizations in which community service can be completed ignores the reality that there are various community organizations that operate structured programs which provide services to benefit the community, but which may not be a 501(c)(3) organization, such as local government agencies, religious nonprofits (such as non-denominational ministries), and smaller social service providers.

We also note that the statute at section 1902(xx)(2)(B) of the Act does not require individuals to volunteer for community service. Whether community service is completed voluntarily or because of a mandate, such as court-ordered community service, the community service still benefits the community. Thus, we believe it is appropriate to use community service activities completed to fulfill a court order or other mandate as countable hours towards meeting the Medicaid community engagement requirement.

States will need to establish processes to verify an individual's community service activities and hours. Additional information about verification is discussed in section II.I.6.b. of this IFC.

3. Work Program

Under section 1902(xx)(2)(C) of the Act, an applicable individual demonstrates community engagement if the individual participates in a work program for not less than 80 hours in such month. Section 1902(xx)(9)(D) of the Act defines work program to have the meaning given such term in section 6(o)(1) of the Food and Nutrition Act of 2008. Section 6(o)(1) in turn defines work program as: (1) a program under title I of the Workforce Innovation and Opportunity Act (WIOA); (2) a program under section 236 of the Trade Act of 1974; (3) a program of employment and training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including an employment and training program under subsection (d)(4) of section 6 of the Food and Nutrition Act of 2008, other than a supervised job search program or job search training program; (4) a program of employment and training for veterans operated by the U.S. Department of Labor or the U.S. Department of Veterans Affairs (VA), and approved by the Secretary of the U.S. Department of Agriculture (USDA); and (5) a workforce partnership under

subsection (d)(4)(N) of section 6 of the Food and Nutrition Act of 2008. We incorporate this definition into our regulation at § 435.552(b) with one modification as described further in this section. We separately note that programs outside of these aforementioned work programs, such as those operated by health providers that do not qualify under the part of the definition related to programs operated or supervised by a State, are not included in this definition. Also, while some States partner with managed care plans to provide a range of supported employment services to individuals receiving home and community-based services under section 1915(c) waivers or as part of section 1915(i) State plan services, these Medicaid-covered employment services are different from work programs as defined at § 435.552(b) and do not independently satisfy the work program community engagement requirement. However, as discussed in section II.M. of this IFC, managed care plans can provide valuable services to help their enrollees meet community engagement obligations, such as referring managed care enrollees to qualified work programs.

We note that the definition at section 6(o)(1) of the Food and Nutrition Act of 2008 includes a program of employment and training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under subsection (d)(4) of the Food and Nutrition Act of 2008 (SNAP Employment and Training (E&T) program), other than a supervised job search program or job search training program. However, limited supervised job search and job search training activities are allowable SNAP E&T program components for the purposes of fulfilling the time limit requirements. To align with SNAP regulations at 7 CFR 273.24(a)(3)(iii), we will permit a program of employment and training that meets the definition of work program under § 435.552(b) to include supervised job search or job search training as a subsidiary activity, as long as the job search activity is less than half of the required hours. We recognize that there are employment and training programs that may require or include some job search activity, such as resume writing or mock interviews. However, we want to make sure that the supervised job search or job search activity is not the primary component of the employment and training program because we believe that the focus

should be on obtaining skills to enable long-term self-sufficiency.³¹

Also, we have received questions regarding whether job search activities that are conducted to receive unemployment insurance will count toward meeting the community engagement requirement. If the unemployment insurance job search activities are conducted in a manner that is consistent with the requirements of the work program, then they will count towards meeting the community engagement requirement. We encourage States to work with their State workforce agencies to establish data sharing and align job search activities and requirements.

We recognize the work programs under section 1902(xx)(9)(D) of the Act include SNAP E&T programs, as provided under subsection (d)(4) of section 6 of the Food and Nutrition Act of 2008 and implementing regulations at 7 CFR 273.24(3)(iii) and 273.7(d) and (e). Since the work program requirements that we are adopting here align with those in SNAP under section 6 of the Food and Nutrition Act of 2008, the same operational requirements for States' SNAP E&T programs would apply for purposes of the Medicaid community engagement requirement, such as SNAP State agencies being responsible for referring eligible SNAP participants to SNAP E&T services and submitting an annual SNAP E&T plan to FNS.

We are not requiring States to establish new work programs but are also not prohibiting States from doing so. We also do not have the authority to change oversight or operational requirements for existing work programs meeting the definition at 1902(xx)(9)(D). States must, however, provide information about work programs that meet these requirements as part of the outreach sent to certain individuals about how to comply with the community engagement requirement that is required under section 1902(xx)(8)(A)(i) of the Act and as discussed in section II.L. of this IFC.

States will need to verify work program activities and hours. Information about verification is discussed in section II.I.6.c. of this IFC.

4. Educational Program

Under section 1902(xx)(2)(D) of the Act, an applicable individual demonstrates community engagement if the individual is enrolled in an educational program at least half-time. We discuss what it means to be enrolled "at least half-time" in section II.C.5. of this IFC. Section 1902(xx)(9)(B) of the Act defines the term educational program to include: (1) an institution of higher education as defined in section 101 of the Higher Education Act of 1965; and (2) a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006. We incorporate these definitions into our regulation at § 435.552(b).

We also note that the definition of "educational program" at section 1902(xx)(9)(B) of the Act is not exclusive, and we believe additional educational activities such as high school and high school equivalency programs should count toward demonstrating community engagement. Although section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006 includes public secondary school programs, that law's definition of career and technical education (the definition to which section 1902(xx)(9)(B)(ii) cross-references) includes only secondary education programs that provide technical skills proficiency. While there are some specialized secondary schools (high schools) that meet this definition, many high schools do not specialize in career and technical education. We recognize that even though only persons aged 19 or older can be applicable individuals, some applicable individuals may be enrolled in a high school or high school program that does not provide technical skills proficiency. For example, an individual's graduation from high school might be delayed for various reasons, including starting school late, repeating a grade, or returning to school after having to take a break.

Additionally, we recognize that applicable individuals will likely include individuals who are age 19 or older and are studying to obtain a high school equivalency certificate through a General Educational Development (GED) program or other high school equivalency program. Completing high school or earning a high school equivalency certificate is commonly a prerequisite for employment and higher education and supports Medicaid beneficiaries in achieving self-sufficiency. Moreover, in TANF, satisfactory attendance at secondary school or in a course of study leading

to a certificate of general equivalence is included in the definition of work activities at 45 CFR 261.2(l).

Thus, in defining an educational program, we adopt at § 435.552(b) the definitions from section 1902(xx)(9)(B) of the Act: an institution of higher education as defined in section 101 of the Higher Education Act, or a program of career and technical education as defined in section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006. We are also including two additional types of educational activity. First, we include in our definition of educational program a high school as defined in title VIII of the Elementary and Secondary Education Act (20 U.S.C. 7801*et seq.*). The definition of high school at 20 U.S.C. 7801(28) is a secondary school³² that grants a diploma, as defined by the State and includes, at least, grade 12. Second, we include in our definition of educational program a State-approved program of study leading to a certificate of high school equivalence for an applicable individual who has not received a high school diploma. We have included a State-approved program in this definition (such as a GED program offered at a community college) because we understand that there are various ways to prepare for the high school equivalency test. However, independent study and self-paced online preparation outside of a State-approved program do not provide sufficient structure to qualify as an activity for the purposes of community engagement. In addition, if the program is not in-person, the State-approved program must be able to monitor and document the program hours. These oversight methods will help with counting hours for this activity if the individual is enrolled less than half-time, and the program does not use credit hours. Information about counting hours when an individual is enrolled less than half-time is discussed further in section II.C.6. of this IFC.

5. Enrollment in an Educational Program at Least Half-Time

Under section 1902(xx)(2)(D) of the Act, an applicable individual demonstrates community engagement if the individual is enrolled in an educational program at least half-time. New § 435.552(b) defines educational program. At new § 435.552(c), we specify how "at least half-time" enrollment is determined.

³² A secondary school is further defined at 20 U.S.C. 7801(45) as a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

³¹ Wroblewska K, Steigelman C, J, et al. (2022). "The Use of Supervised Job Search, Job Search Training, and Integrated Job Search in SNAP E&T: Three Cases Studies." U.S. Department of Agriculture, Food and Nutrition Service. Prepared by Insight Policy Research, Inc. <https://fns-prod.azureedge.us/sites/default/files/resource-files/SNAPETJobSearch.pdf>.

We considered whether the State or the relevant educational institution should determine a student's enrollment status (that is, whether the student is enrolled at least half-time). The U.S. Department of Education's (ED) definition of half-time status defers to the institution to make its own determination as to whether an enrolled student is carrying a half-time academic workload (see definition of "half-time student" in 34 CFR 668.2(b)). Additionally, in SNAP regulations related to student eligibility, the institution of higher education determines enrollment status (see 7 CFR 273.5(b)(10) specifying the enrollment status of a single parent "as determined by the institution"). For consistency with existing standards in SNAP and those of ED, we provide at § 435.552(c) that the State shall use the enrollment status determined by the school or institution (that is, full-time, half-time, less than half-time). This standard applies to all educational programs under new § 435.552(b). We believe that the school or institution is best able to determine enrollment status because whether an individual is enrolled full-time, half-time, or less than half-time is generally dependent on the type of school and the curriculum. In addition, a student's enrollment status determined by the institution is reported to the National Student Clearinghouse, which is a data source that States can use to verify student enrollment (see section II.I.6.d. of this IFC for additional information).

For consistency with SNAP regulations related to students, we are adopting enrollment status requirements similar to those at 7 CFR 273.5(c). These requirements address when student enrollment starts and ends and provide standards to follow during school recess. These standards are necessary because there are periods when school may not be in session due to scheduled breaks (for example, winter and summer recess), and due to the short duration of the scheduled breaks, an individual might not be able to complete another community engagement activity. For example, if a student is enrolled in an institution of higher education full-time and the institution has a 1-month winter break, it is not reasonable to condition Medicaid eligibility on the individual applying, interviewing, starting a job, and working for not less than 80 hours in that 1-month period before going back to school. Thus, at new § 435.552(c)(1), the enrollment status of an applicable individual begins on the first day of the school term.

At new § 435.552(c)(2), the enrollment will continue through normal periods of

attendance, vacation and recess. The determination of enrollment status during vacation and recess shall be based on the student's status just prior to the school break. Per § 435.552(c)(3), the enrollment status ends at the end of the month that the student is expelled, withdraws, completes the school term and is not registered for the next school term (excluding optional terms such as winter or summer sessions), or graduates (unless the student is enrolled in another educational program). For example, a full-time high school student graduates from high school on May 15 and has enrolled full-time in a community college, and the community college term starts on August 21. The individual applies for Medicaid on July 1 in a State that has a 1-month review period (as described in section II.H.2. of this IFC) for community engagement at application. The State determines that the individual is otherwise eligible in the adult group and is an applicable individual subject to the community engagement requirement. Because the individual is enrolled in community college with a start date of August 21, the individual has applied for Medicaid during a school recess period (school break). The enrollment status will be based on the individual's enrollment status prior to the school break. Prior to the school break, the individual was enrolled full-time as a high school student, so the individual has met the community engagement requirement.

For information about verifying enrollment in an educational program, please see section II.I.6.d. of this IFC.

6. Enrollment in an Educational Program Less Than Half-Time

Under section 1902(xx)(2)(D) of the Act, an applicable individual demonstrates community engagement if the individual is enrolled in an educational program at least half-time. As noted in section II.C.4. of this IFC, new § 435.552(b) explains the meaning of educational program, and § 435.552(c) describes that full-time, half-time, or less than half-time enrollment is to be determined by the institution or school. However, consistent with section 1902(xx)(2)(E) of the Act, education hours accrued by an individual enrolled in an educational program less than half-time may be combined with hours performed for other community engagement activities to count towards demonstrating community engagement. Next, we discuss how educational program hours should be counted when an individual is enrolled less than half-time.

As stated in new § 435.552(d), when a school determines that an applicable

individual is enrolled less than half-time in an educational program that uses credit hours, then 1 credit hour counts as 3 education hours per week during the individual's enrollment. For example, 1 credit hour equals 1 hour of instruction, and we expect students to spend 2 hours on out-of-class work for a total of 3 hours of time spent in the educational program for the week. To calculate the time spent in the educational program for a 1 credit hour course during a 1-month period, this would be 3 hours a week multiplied by 4.33 weeks (in a month)³³ for a total of 12.99 hours in a month. This new standard is based on the Carnegie Unit, which defines 1 unit of credit as equal to 3 hours of student work per week (1 hour of lecture plus 2 hours of homework).³⁴ The Carnegie Unit is used in the credit hour definition at 34 CFR 600.2. As noted in ED guidance provided to institutions and accrediting agencies regarding the credit hour, "A credit hour for Federal purposes is an institutionally established equivalency that reasonably approximates some minimum amount of student work reflective of the amount of work expected in a Carnegie unit: key phrases being "institutionally established," "equivalency," "reasonably approximates," and "minimum amount."³⁵ Under the definitions at 34 CFR 600.2, a credit hour must reasonably approximate not less than 1 hour of classroom or direct faculty instruction and a minimum of 2 hours of out-of-class student work each week, or at least an equivalent amount of work for other academic activities as established by the institution.³⁶

We decided upon this credit hour standard because it allows for consistency across schools and programs and provides a straightforward way to account for instructional time and student work. This standard is also

³³ On average, there are 4.33 weeks in a month. This is calculated by dividing the total number of weeks in a year (52), by the total number of months (12).

³⁴ Adler KM (2020). "Determining Carnegie Units: Student Engagement in Online Courses without a Residential Equivalent." *Online Journal of Distance Learning Administration*, 23(1). <https://ojdla.com/articles/determining-carnegie-units-student-engagement-in-online-courses-without-a-residential-equivalent>.

³⁵ United States Department of Education, Office of Postsecondary Education, "Guidance to Institutions and Accrediting Agencies Regarding a Credit Hour as Defined in the Final Regulations Published on October 29, 2010," (March 18, 2011). <https://fsapartners.ed.gov/sites/default/files/attachments/dpccletters/GEN1106.pdf>.

³⁶ The regulation further provides that this is for "approximately fifteen weeks for one semester or trimester hour of credit, or 10 to 12 weeks for one quarter hour of credit, or the equivalent amount of work over a different period of time."

consistent with the ED standards described here. For example, ED provides standards that institutions can use to determine full-time and half-time student status for purposes of participation in financial assistance programs. The following ED standards are illustrative. The full-time student standard for a program that measures progress in credit hours is 12 semester hours for an academic term (see full-time student definition at 34 CFR 668.2(b)). A half-time student should have a workload, as determined by the institution, that amounts to half of the workload of the applicable minimum requirement of a full-time student (see half-time student definition at 34 CFR 668.2(b)). This means that, as determined by the institution, 6 semester hours for an academic term could be sufficient for half-time enrollment, and would suffice to

demonstrate community engagement under § 435.552(a)(4).

However, if an individual's institution determines that 6 credit/semester hours is insufficient for half-time enrollment, a State would use our standard to convert that 6 credit/semester hours to monthly hours of educational activity. Under our standard, 6 credit hours converts to 77.94 hours of monthly activity for community engagement ($6 \text{ credit hours} \times 3 \times 4.33 = 77.94$), which is close to, but slightly less than, the 80 hours of activity needed to demonstrate community engagement for a month. This would be an appropriate outcome for a student with a less than half-time course load. We therefore believe that our standard is reasonable and is a fair measurement of time spent on instruction and independent study hours. This standard applies to all educational programs that use credit hours included in the definition at

§ 435.552(b). We considered adopting a different standard for high school and high school equivalency programs. However, we believe doing so would introduce additional administrative complexity without meaningful benefits for States or individuals. High school and high school equivalency students are developing academic skills for independent learning, and counting the hours they need to do so towards their community engagement hours is consistent with the purpose of the community engagement requirement.

To summarize the standard introduced in this IFC, in cases where the educational institution considers 6 credit/semester hours or fewer to be less than half-time enrollment, multiplying the number of credit hours by 3 to provide the weekly number of hours of educational activity, and then by 4.33 to determine an average monthly number produces the following:

TABLE 1: Conversion of Credit Hours to Monthly Hours of Community Engagement Activity

Credit Hour(s)	Monthly Hours of Activity for Community Engagement
1 credit hour	12.99 hours
2 credit hours	25.98 hours
3 credit hours	38.97 hours
4 credit hours	51.96 hours
5 credit hours	64.95 hours
6 credit hours	77.94 hours

For educational programs that do not use credit hours, if an individual is enrolled less than half-time, then the hours spent attending class and participating in educational activities will count towards meeting the requirement. For example, 1 hour of instruction will count as 1 hour of activity, 2 hours of hands-on training will count as 2 hours of activity, 3 hours of lab work will count as 3 hours of activity, 4 hours of clinical activity will count as 4 hours of activity, and so forth. We believe that this standard will primarily apply to educational programs that train individuals for industry certifications and require individuals to learn and practice technical skills, such as welding, phlebotomy, cosmetology, and precision machining. We decided upon this standard because these types of educational programs generally require a specific number of training hours for certification, so the time spent training is an appropriate way to count the educational program hours. Also, SNAP and TANF use similar standards

under their respective work requirements.³⁷ SNAP's time limit work requirements specify at 7 CFR 273.24(a)(1) that fulfilling the work requirement can mean participating in and complying with the requirements of a work program for 20 hours per week. A work program at 7 CFR 273.24(a)(3) includes an employment and training program under 7 CFR 273.7(e), which includes allowable educational program activities such as courses or programs of study. According to 7 CFR 273.7(e)(4)(i), the time spent in an employment and training program component is determined by the State agency. States can specify participation hours in their FNS SNAP E&T State Plan, for example specifying for an educational

component that participants engage in a 5-day training, for 4 hours per day.³⁸

TANF's definitions at 45 CFR 261.2(i) through (l) include hours spent participating in vocational educational training, job skills training directly related to employment, education directly related to employment, and satisfactory attendance at a secondary school or course of study leading to a certificate of general equivalence. For TANF, States submit a Work Verification Plan detailing how they verify and document work participation hours and activities. TANF's Work Verification Plan Guide³⁹ also includes examples of work activity descriptions that would be approved for each countable work activity. For example, for vocational educational training, the

³⁷ Under SNAP or TANF, individuals receiving benefits may be enrolled in educational programs that use credit hours but still have their time counted based on hours in class or participation. As explained above, we developed the credit hour standard for educational programs that use credit hours to account more fully for the educational process typical in such programs.

³⁸ This example is from California's FNS SNAP E&T State Plan submission for FY26.

³⁹ Office of Management and Budget (OMB) #0970-0338, "Work Verification Plan Guide," expires 10/31/2026. Available at: <https://acf.gov/sites/default/files/documents/ofa/Work-verification-plan-guidance-valid-thru-2026-10.pdf>.

Work Verification Plan Guide specifies that “Actual hours spent in class as well as time spent performing clinical requirements, lab work or other ancillary activities required for approved vocational educational training programs are considered to be a part of the primary activity for which it is required and is countable.”⁴⁰

To be clear, when individuals are enrolled less than half-time in an educational program that uses credit hours, States should apply the credit hour standard. However, if the educational program does not use credit hours, then the hours spent attending class and participating in educational activities count towards meeting community engagement. We considered having States convert attendance and participation into credit hours so that there would only be one way to count hours for less than half-time enrollment. However, this would be more burdensome for States, with little meaningful difference for individuals. We welcome comments on any other reasonable approaches.

7. Combination of Activities

Under section 1902(xx)(2)(E) of the Act, an applicable individual demonstrates community engagement if the individual engages in any combination of work, community service, participation in a work program, and enrollment in an educational program less than half-time. The combined hours for the activities must be a total of not less than 80 hours for such month.

As specified at new § 435.552(e)(1), a State would only need to combine an individual’s educational program hours with hours spent performing other activities if the individual is enrolled in the educational program less than half-time. If the applicable individual were enrolled in an educational program at least half-time, then that individual would already have demonstrated community engagement as specified at § 435.552(a)(4). At new § 435.552(e)(2), we specify that the hours for work, community service, and participating in a work program must be determined separately and based on the time spent performing those activities in such month. As specified at new § 435.552(e)(3), States must calculate the hours for less than half-time enrollment in an educational program as described in § 435.552(d).

New § 435.552(e)(4) specifies that once the State determines an individual’s hours for work, completing community service, participating in a

work program, and less than half-time enrollment in an educational program in such month, the State must add these hours together to obtain the total hours for all activities. The combined time for all activities must be a total of not less than 80 hours for an applicable individual to meet the community engagement requirement as described at § 435.552(e). However, the State might not need to determine an applicable individual’s total number of hours for all types of community engagement activity if the applicable individual demonstrates they met the 80-hour requirement through any combination of activities. For example, consider an applicable individual who is enrolled in community college for 4 credit hours, which converts to 51.96 hours of activity, works for pay for 30 hours, and participates in community service. Because the individual’s education and work activity totals 81.96 hours for the month, in the interest of efficiency, we encourage a State to conclude that the individual has met their community engagement requirement for the month and not consider the individual’s community service activity, as it is not necessary to meet the community engagement requirement.

8. Monthly Income and Average Monthly Income for Seasonal Workers

Under section 1902(xx)(2)(F) of the Act, an applicable individual demonstrates community engagement for a month if “the individual has a monthly income that is not less than the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act of 1938 (FLSA), multiplied by 80 hours.” We implement this provision at new § 435.552(f)(1). In 2026, the Federal minimum wage is \$7.25 per hour,⁴¹ which multiplied by 80 equals \$580. We interpret the “applicable” minimum wage to mean the Federal minimum wage under section 6 of the FLSA (29 U.S.C. 206(a)(1)(C)) that is in effect at the time a State applies the monthly income threshold to assess compliance with the community engagement requirement in case of future amendments to section 6 of the FLSA. As discussed further below, we do not use alternative minimum wage amounts in the FLSA for the purpose of identifying the monthly income threshold for demonstrating compliance with the community engagement requirement. Under section 3(m) of the FLSA,⁴² employers may pay certain “tipped employee[s]” a lower wage, provided

the wage plus earned tips is at least equal to the minimum wage under section 6 of such Act. This provision is outside of section 6 of the FLSA, and thus States may not use a tipped wage (regardless of the industry or type of work) to identify the income threshold for demonstrating community engagement based on monthly income.

Another lower wage that is in section 6(g) of the FLSA is a minimum wage of \$4.25 per hour for individuals under age 20 who are in their first 90 consecutive calendar days of employment, which could be relevant to a 19-year-old applicable individual. However, to the extent that employers avail themselves of this lower introductory wage, we believe it would be extremely difficult in practice for a State Medicaid agency to identify to whom this lower wage requirement would apply and to adjust the monthly income threshold only for those individuals. Moreover, this lower introductory wage is temporary—for only the first 90 calendar days of employment—making it even less likely that a State will encounter an affected individual at the point of evaluating compliance with community engagement. Therefore, for simplicity of administration of this provision, we interpret the Federal minimum wage to be the single, general minimum wage at section 6(a)(1)(C) of the FLSA for all applicable individuals. In addition, as discussed in section II.I.6. of this IFC, States must first attempt to verify community engagement on an *ex parte* basis, including hours worked, regardless of the existence of a lower introductory wage in a State.

We further recognize that individual States may have a generally applicable State minimum wage that is higher than the Federal minimum wage (or in limited circumstances lower or no minimum wage). Because section 1902(xx)(2)(F) of the Act references only section 6 of the FLSA (that is, the Federal minimum wage) and does not provide for the use of alternative State minimum wages, States may not use such State-specific minimum wages in place of the applicable Federal minimum wage to calculate the monthly income threshold for individuals to demonstrate compliance with community engagement under § 435.552(f)(1).

Under section 1902(xx)(2)(G) of the Act, an applicable individual demonstrates compliance with community engagement for a month if the individual is a seasonal worker as described in section 45R(d)(5)(B) of the Code and has an average monthly income over the preceding 6 months that is not less than the applicable

⁴¹ 29 U.S.C. 206(a)(1)(C).

⁴² 29 U.S.C. 203(m).

⁴⁰ Ibid.

Federal minimum wage requirement under section 6 of the FLSA multiplied by 80 hours. Section 45R(d)(5)(B) of the Code defines a seasonal worker as a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers whose “employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year” (29 CFR 500.20(s)(1)) and retail workers employed exclusively during holiday seasons. We implement these provisions at new § 435.552(g)(1) and (2). As with monthly income under § 435.552(f), States must use the Federal minimum wage in making this calculation.

The statute at section 1902(xx)(2)(F) and (G) of the Act refers to an individual’s “monthly income” and “average monthly income,” but does not further define how States should calculate monthly income for these purposes. For the calculation of an applicable individual’s monthly income under new § 435.552(f) and average monthly income under new § 435.552(g), we define “monthly income” to be the same as the individual’s household income used for financial eligibility for Medicaid. Most applicable individuals are eligible for or enrolled in the adult group under § 435.119, which is a group that has an income standard based on MAGI using the MAGI-based methodologies at § 435.603. Similarly, most section 1115 demonstrations that have applicable individuals (as discussed in section II.B. of this IFC) have an income standard based on MAGI and use MAGI-based methodologies for the relevant demonstration population.

We considered using different interpretations of “monthly income” for the calculation. For example, we considered counting only earned income because it could align with the other work-related ways to demonstrate compliance. However, using only earned income for this purpose would be inconsistent with how “income” is defined elsewhere in the Medicaid statute. Specifically, section 1902(e)(14)(A) of the Act dictates that “[n]otwithstanding . . . any other provision of this title, except as provided in subparagraph (D), for purposes of determining income eligibility for medical assistance under the State plan or under any waiver of such plan *and for any other purpose applicable under the plan or waiver for which a determination of income is required* . . . , a State shall use the modified adjusted gross income of an

individual and, in the case of an individual in a family greater than one, the household income of such family.” (Emphasis added.) Section 1902(e)(14)(D) of the Act, which lists the exceptions to the mandatory use of MAGI-based household income, does not include an exception relating to the determination of income for applicable individuals for the purposes of assessing community engagement. Additionally, neither section 1902(xx) of the Act nor section 71119 of the WFTC legislation specifies that section 1902(xx) supersedes section 1902(e)(14) of the Act, nor does section 1902(xx) of the Act contain its own definition of “monthly income” or mandate that a particular methodology be used to calculate “monthly income.” Nothing in section 1902(xx) of the Act or section 71119 of the WFTC legislation suggests that section 1902(e)(14) of the Act should not apply when determining income for purposes of section 1902(xx).

Under new § 435.552(f)(2) and (g)(3), we establish that States must use the MAGI-based methodologies at § 435.603 when making income determinations for demonstrating community engagement. A contrary reading of the statute would require that States, after determining an individual income-eligible for the adult group, apply a *separate and distinct* income determination for such individuals in evaluating their demonstration of community engagement. There is no indication in section 1902(xx)(2) of the Act or elsewhere that the MAGI-based income provisions of section 1902(e)(14)(A) of the Act should not apply to the calculations under section 1902(xx)(2)(F) and (G) of the Act. Therefore, under § 435.552, we are interpreting section 1902(xx)(2)(F) and (G) of the Act in a manner that is consistent with section 1902(e)(14) of the Act. We specify that States must use the individual’s MAGI-based income as defined at § 435.603 in assessing an individual’s monthly income for the purpose of determining if an individual demonstrates community engagement under § 435.552(f) or (g).

The use of MAGI-based methodologies is required under § 435.552(f) and (g) for all applicable individuals, including those whose eligibility or enrollment is under a section 1115 demonstration rather than the State plan. Even if a State does not have an income test or uses a non-MAGI methodology for determining financial eligibility for a population of applicable individuals eligible only under section 1115 demonstration authority, we nevertheless require States to use MAGI-based methodologies for the purpose of

determining income under § 435.552(f) and (g). We believe that establishing a uniform methodology is necessary for the consistent and fair treatment of all applicable individuals across States, regardless of whether they are eligible for or enrolled in the State plan or a section 1115 demonstration. We recognize that requiring the use of MAGI-based methodologies for section 1115 demonstration populations that do not use such methodologies for underlying financial eligibility could present an administrative burden for affected States. However, sections 1902(xx)(2)(F) and (G) of the Act require income counting, and we believe any additional State burden from using MAGI-based methodologies in these situations is outweighed by the benefits of requiring consistent methodologies within and across States, rather than creating different methodologies to count income for the community engagement requirement for each of the implicated section 1115 demonstrations.

Thus, States must use the individual’s MAGI-based income, as defined under § 435.603(e), for their MAGI-based household as defined under § 435.603(d) and (f), for purposes of § 435.552(f) and (g). The countable income under § 435.603(e) generally includes earned income as well as countable unearned income, meaning that States must take into account all of this income for purposes of § 435.552(f) and (g). Under § 435.603(d) and (f), household income is the total income of everyone in the individual’s household. Although sections 1902(xx)(2)(F) and (G) of the Act refer to the income of “the individual,” all Medicaid applicants and beneficiaries have their eligibility determined on an individual basis, and, under § 435.603(d), States must determine individuals’ Medicaid financial eligibility using household income, which includes the income of every individual included in the individual’s household.

Finally, under § 435.603(h), Medicaid financial eligibility is generally based on the current month at the point when eligibility for Medicaid is being determined, with certain options available to States (including the use of a reasonably predictable changes methodology under § 435.603(h)(3), as discussed further in this IFC). For the purposes of demonstrating community engagement under § 435.552(f) and (g), we decided to apply the requirement to use “current monthly household income and family size” in § 435.603(h) to the month that the State is evaluating for the purpose of community engagement, rather than to the month of application or renewal. That is, States generally

must evaluate the monthly income for the month or months of the review period, as defined in section II.H. of this IFC, to determine whether an applicable individual is demonstrating community engagement in that month. We believe this is the most appropriate and logical application of the income counting methodology for States to use for the community engagement requirement. We implement this requirement at § 435.552(f)(2) and (g)(2).

As a general example, if the State conducts financial eligibility for an applicant and determines that the individual appears to be an applicable individual eligible for the State plan adult group and has a monthly household MAGI-based income of \$650 (which is verified through information available to the State) in the required number of months of the review period, as defined in section II.H. of this IFC, then the State would use the verified \$650 income, which is greater than \$580 (applicable Federal minimum wage multiplied by 80), to determine that the individual demonstrated community engagement under § 435.552(f).

In addition, our intent is for States to use data sources and programming logic readily available to them rather than create new methodologies and systems specific to community engagement. We believe it will be more efficient for States to implement calculations based on existing methodologies, rather than applying one income methodology for determining financial eligibility and a different methodology to determine monthly or average monthly income as a condition of eligibility under community engagement.

We have received questions regarding States' options when averaging seasonal workers' monthly income under section 1902(xx)(2)(G) of the Act. States have an existing option to use a "reasonably predictable changes" methodology when using MAGI-based methodologies to determine household income, which, as discussed earlier in this section of this IFC, is the income used for demonstrating compliance under § 435.552(f) and (g). Specifically, § 435.603(h)(3) permits States to adopt (through a State plan election) a reasonable method to account for reasonably predictable increases or decreases (or both) in future income to determine monthly income. This option can help make income determinations for applicants and beneficiaries more accurate over a period of time and is particularly useful for averaging seasonal worker income over a period of up to 12 months. A reasonably predictable changes methodology takes predictable *future* changes into account

by including a prorated portion of reasonably predictable future income in the individual's monthly income to smooth out predictable fluctuations in income.

For example, suppose an individual in a State with a 12-month reasonably predictable changes in income methodology expects to have steady monthly income of \$500 and expects (based on the previous year) to have \$400 per month in additional countable income in the months of October through December, for a total of \$1,200 of additional countable income. Suppose further that the State is determining monthly income for August for the purpose of the community engagement requirement. The State prorates the total seasonal income to equal \$100 ($\$1,200/12 = \$100$) in additional monthly income for August (and in each of the 12 months). The monthly income is determined to be \$600 (\$500 steady income plus \$100 prorated seasonal income). Note that because the State uses a 12-month methodology, this calculation would be the same in any month of the year. Thus, while the prorated amount is based on expected *future* income, the methodology is used to determine the monthly income for each month in that 12-month period, including the month(s) of the review period (as defined in section II.H. of this IFC) the State is assessing to determine community engagement compliance. Such a reasonably predictable changes methodology, in States that elect it, is an integral part of their MAGI-based methodologies, and therefore States must use their reasonably predictable changes methodology to determine monthly income when an individual has fluctuating income that is subject to the State's methodology.

For the purpose of the community engagement requirement, States with a MAGI-based reasonably predictable changes methodology for seasonal workers include a prorated portion of reasonably predictable future income in monthly income added to stable or non-fluctuating income (if any), and this total average monthly income will effectively be the monthly income used to assess community engagement under section 1902(xx)(2)(G) of the Act. As another example, consider an individual who is employed from April through September, earning \$1,500 per month, and unemployed with no income for the remaining 6 months of the year. If the individual applies for Medicaid in December, and the State has elected reasonably predictable increases and decreases in income over 12 months, the State will use the prorated MAGI-based

monthly income to determine financial eligibility and also to determine compliance with the community engagement requirement. In this case, the individual's calculated monthly income is \$750 (\$1,500 multiplied by 6, then divided by 12) in December for financial eligibility and \$750 in November (or in the months of the relevant review period, as defined in section II.H. of this IFC) for demonstrating community engagement. The average monthly income over the previous 6 months would also be \$750. Alternatively, if the individual applies in July when earning income, and the other facts were the same (including that the State takes into consideration reasonably predictable future decreases in income), the outcome would still be a calculated monthly income of \$750 for financial eligibility and for demonstrating community engagement using average monthly income.

Most States currently elect the option to use a reasonable method to account for reasonably predictable changes, and among those States, most elect both reasonably predictable increases and decreases in future income. Some States only account for reasonably predictable future decreases. Because accounting only for reasonably predictable future decreases generally decreases countable household income, it may result in some seasonal workers not reaching the \$580 per month (Federal minimum wage multiplied by 80) threshold under section 1902(xx)(2)(G) of the Act. We further note that a MAGI-based reasonably predictable changes methodology applies broadly to all MAGI-based eligibility determinations, including for the adult group and applicable section 1115 demonstrations, and must be used consistently and in the same manner for financial eligibility and for compliance with the community engagement requirement for applicable individuals.

If a State does not use a reasonably predictable changes methodology, then for the purpose of demonstrating community engagement for seasonal workers, the State would use the individual's average income over the preceding 6 months, as provided at section 1902(xx)(2)(G) of the Act. The "preceding 6 months" verified by the State would be the 6 months preceding a month of the review period for which the State is assessing compliance with the community engagement requirement. Consider the facts of the previous example, except that the State does not elect a reasonably predictable changes methodology, and the State requires an applicable individual to demonstrate community engagement for

1 month at application. The seasonal worker applies in July and is an applicable individual, so the relevant review period to demonstrate community engagement is the month of June. The State will average the income from December through May to determine if the individual demonstrates community engagement in June, the month before application. In this case, the individual has 2 months of seasonal employment, which averaged over 6 months equals \$500 (2 months at \$1,500 per month, then divided by 6). Because \$500 is below \$580, this individual is not considered to be demonstrating community engagement in June based on the 6-month average monthly income for seasonal workers. This outcome contrasts with the prior example using an income counting methodology that accounts for reasonably predictable changes.

Similarly, at renewal, the State will average the income for the 6 months preceding the month being assessed for compliance. Thus, if a seasonal worker who is an applicable individual has a review period that spans from July through December, the average income from January to June is used to assess compliance in July, from February to July to assess compliance in August, from March to August to assess compliance in September, etc. The State will continue assessing each month in the review period until the State either verifies compliance for the required number of months (including verifying if the applicable individual demonstrated community engagement on a different basis, that is, through an activity or combination of activities, or is deemed to have demonstrated community engagement because of an exception) or has assessed all the months in the review period.

We have also received several questions regarding situations in which an individual's monthly income falls short of the amount required to meet the community engagement requirement under the monthly or average monthly income criteria. For example, we have been asked whether, if the State verifies \$380 in monthly income for the individual (which is short of the \$580/month requirements at § 435.552(f) and (g) assuming a minimum wage of \$7.25/hour), the State could use that income towards meeting an individual's community engagement requirement. Section 1902(xx)(2) of the Act does not address this scenario but does provide the Secretary with the authority to establish criteria for determining whether an applicable individual meets the conditions for demonstrating

community engagement. Section 1902(xx)(2)(A) of the Act includes work as a community engagement activity. Consistent with our statutory authority to establish the criteria for demonstrating community engagement, at new § 435.552(e)(2)(i) and (ii) we permit income to be used as a proxy for calculating work hours because many income verification data sources, such as quarterly wage data, include individual earned income and thus can be used to derive the number of hours worked under § 435.552(a)(1). If the individual's verified income is below the Federal minimum wage multiplied by 80 hours, and if the State does not have information regarding the number of hours worked, then it would be reasonable for States to have the option to use income to calculate a number of hours worked by dividing the income for the month by the applicable Federal minimum wage. Thus, if the State verifies \$380 in monthly income, then using the current Federal minimum wage of \$7.25, the individual can be credited with having worked 52 hours for the month (\$380 divided by \$7.25). The individual would then need to participate in an additional 28 hours ($80 - 52 = 28$) of community engagement activities to meet the requirement for the month.

We recognize that States will be using the individual's MAGI-based income for their MAGI-based household when converting monthly income to hours worked. While we are providing States with the option to use income to determine hours worked, this option must only be used when the monthly income is less than the applicable Federal minimum wage multiplied by 80 hours and the State does not have information regarding the number of hours worked. In these circumstances, the State must use a reasonable method to allocate hours, between members of the household. Providing States flexibility to convert monthly income to hours worked for purposes of calculating an applicable individual's work hours is reasonable because the concept underlying the monthly income and average monthly income criteria at sections 1902(xx)(2)(F) and (G) of the Act is that monthly income can be a proxy for hours worked. We do not see a basis for prohibiting States from using a similar methodology to determine hours worked if an individual has monthly income below the amount that equates to 80 hours at minimum wage, the State has no documentation regarding number of hours worked and uses a reasonable methodology to allocate hours, as necessary.

Additionally, some States already use monthly income to determine self-employment work hours when verifying compliance with SNAP work requirements. We reiterate that when this proxy approach results in the work hours calculated as less than 80, those hours would then have to be combined with hours from another activity to meet the community engagement requirement.

Please see section II.I.6.f. of this IFC for information about verification of the monthly income and average monthly income requirements.

D. Mandatory Exceptions for Certain Individuals

Section 1902(xx)(3)(A) of the Act establishes mandatory exceptions from demonstrating community engagement via the pathways described in § 435.552(a) (see section II.C. of this IFC for more information regarding demonstrating compliance) for certain applicable individuals. States must deem an applicable individual compliant for a month if the individual meets the mandatory exception criteria (which are further described in this section of this IFC). New § 435.553 implements and interprets the mandatory exceptions in section 1902(xx)(3)(A) of the Act.

New § 435.553(a) implements section 1902(xx)(3)(A)(i) of the Act, which establishes mandatory exceptions for applicable individuals if, for part or all of a month, the individual was: (1) under the age of 19; (2) entitled to, or enrolled for benefits under Medicare part A, or enrolled for benefits under Medicare part B; (3) described in any of the mandatory eligibility groups in section 1902(a)(10)(A)(i)(I) through (VII) of the Act; or (4) a specified excluded individual as defined in section 1902(xx)(9)(A)(ii) of the Act (see section II.E. of this IFC for an explanation of specified excluded individuals, and section II.F. of this IFC for a discussion of the similarities and differences between mandatory exceptions and specified excluded individuals). States must determine whether an applicable individual met exception criteria for part or all of a relevant month. We interpret the statutory references to "a month" and "such month" to refer to any month in the State's review period (described further in section II.H. of this IFC). This could be a month during the State's review period when determining eligibility at application, a month during an individual's eligibility period at renewal, and, at State option, a month during the relevant alternative review period during which the State elects to conduct more frequent verifications of

community engagement compliance (as described in section II.H. of this IFC).

Because compliance with community engagement is assessed for a time period that predates an individual's application or renewal date (as described in more detail in section II.H.1 of this IFC), the mandatory exceptions provide protections, for example, for beneficiaries who were previously excluded from the requirement to demonstrate community engagement but whose exclusion ends, or who were enrolled in another eligibility group and, following a redetermination, transition to an eligibility group consisting of applicable individuals. These exceptions can allow such beneficiaries time to understand their rights and responsibilities and demonstrate compliance with community engagement as it was not a condition of their Medicaid eligibility previously.

For example, a beneficiary enrolled in the adult group has been excluded from the community engagement requirement because they have a dependent child who is age 13, but their child turns 14 during the individual's eligibility period. During the beneficiary's renewal, the State determines the individual is now an applicable individual subject to the community engagement requirement. The State requires beneficiaries to demonstrate 1 month of community engagement activity at renewal. Because the beneficiary was a specified excluded individual as a result of having a dependent child under the age of 14 for part or all of at least 1 month during the review period, which aligns with the eligibility period in this scenario, they meet the mandatory exception criteria for at least 1 month during the review period (see section II.H.3. of this IFC) and thus are deemed compliant with community engagement during the review period at renewal. Their eligibility would be renewed with proper notice of the determination consistent with § 435.917(b)(1); this notice would be accompanied by the outreach notice content described at new § 435.561(c) which includes information on how to comply with the requirement to demonstrate community engagement and the consequences of noncompliance, consistent with § 435.561(b) (described in section II.L. of this IFC). Going forward, the individual would be subject to the community engagement requirement.

New § 435.553(b) implements section 1902(xx)(3)(A)(ii) of the Act, which establishes an exception for incarcerated

individuals.⁴³ Under the exception, an applicable individual is deemed compliant with community engagement for a month if "at any point during the 3-month period ending on the first day of such month, the individual was an inmate of a public institution." Unlike the other mandatory exceptions, which require the State to deem an applicable individual as demonstrating community engagement in a month if the individual meets the exception in that month, the exception for individuals who were previously inmates of a public institution applies to a 3-month period prior to the month in which the State reviews the individual for compliance with community engagement. We believe that the 3-month timeframe for this exception reflects the significance of the transition from a public institution to a community setting. This policy aligns with Congress' recent efforts to support individuals in attaining self-sufficiency during the transition period following incarceration.⁴⁴ In addition to this mandatory exception, inmates of a public institution are defined as "specified excluded individuals" at section 1902(xx)(9)(A)(ii)(VIII) of the Act, discussed further in section II.E.8. of this IFC.

When a State assesses whether it can deem compliance with community engagement for a month for someone who was previously incarcerated, it will need to determine when an individual's incarceration ended in relation to the month(s) for which the State is determining compliance. For example, an individual was an inmate of a public institution and was released on March 15. The individual applies for Medicaid on June 1 in a State that has a 1-month review period for community engagement at application (see section II.H.1. of this IFC for further discussion of the review period). The State determines the individual is eligible in the adult group and is an applicable individual, so must assess whether the individual met or is deemed to have met the community engagement requirement in May (the month prior to the month of application). To apply the exception for incarcerated individuals, the State would assess whether the individual

was an inmate at any point in the 3-month period prior to May 1. Accordingly, the State would determine whether the individual was an inmate in February, March, or April. Because the individual was an inmate in March, the State would deem the individual to have met the community engagement requirement and would enroll the individual in the adult group.

We note that an applicable individual can be deemed compliant only for the month(s) in which the individual meets the mandatory exception criteria. States that require applicable individuals to demonstrate compliance with community engagement for more than 1 month during the review period will need to verify that an applicable individual is excepted, demonstrates community engagement, or meets a combination of these community engagement criteria for the total number of months specified by the State in the review period.

E. Specified Excluded Individuals

Section 1902(xx)(9)(A)(ii) of the Act lists nine categories of individuals meeting the definition of a "specified excluded individual." These individuals are excluded from the definition of "applicable individual" at section 1902(xx)(9)(A)(i) of the Act; therefore, for the nine categories of specified excluded individuals, community engagement is not a condition of eligibility, and such individuals do not need to demonstrate community engagement to qualify for the State plan adult group or for eligibility under an applicable section 1115 demonstration. New § 435.554 implements the statutory definition of specified excluded individuals, as further discussed in this section. If a State determines someone to be a specified excluded individual at application, renewal, or, if elected by the State, at the time of a more frequent verification of community engagement compliance, it must not determine whether that person met the community engagement requirement during the applicable community engagement review period (see section II.H.1. of this IFC for more information). Similarly, while States must deem an applicable individual compliant with the community engagement requirement for a month if during any part of that month that person was a specified excluded individual, this deeming requirement does not apply if a State has already determined that the person is a specified excluded individual at application, renewal, or at the time of a more frequent verification, because only an applicable individual must

⁴³ For purposes of this discussion, "incarcerated" has the same meaning as "inmate of a public institution" as defined at § 435.1010.

⁴⁴ Section 1902(a)(84)(A), as amended by Division G, Title I, Section 205 of the CAA, 2024 requires States to suspend rather than terminate Medicaid eligibility during periods of incarceration for all Medicaid-eligible individuals; Section 1002 of the SUPPORT Act directed the Secretary of HHS to develop guidance on how section 1115 demonstrations can be used to support incarcerated individuals transitioning to the community.

demonstrate community engagement. Therefore, States must not deem specified excluded individuals compliant with the community engagement requirement. We explain the distinction between mandatory exceptions and specified excluded individuals in more detail in section II.F. of this IFC.

Several groups of specified excluded individuals are, by definition, not usually eligible under the State plan adult group, described at section 1902(a)(10)(A)(i)(VIII) of the Act, and many may be eligible through a separate eligibility group (for example, the pregnant women group, described at § 435.116) for which community engagement does not apply. However, these exclusions are necessary for individuals who may be eligible to enroll or are enrolled in the State plan adult group or an applicable section 1115 demonstration, as described in section II.B. of this IFC, but still meet the exclusion criteria.

New § 435.554 implements and interprets section 1902(xx)(9)(A)(ii) of the Act. We intend to apply existing Medicaid definitions where possible to align with existing eligibility systems and structures. Where terms used to describe specified excluded individuals do not have precedent in Medicaid, or our interpretation of the statutory language differs from existing Medicaid definitions, we establish definitions through this IFC. Section II.L.7. of this IFC addresses verification requirements regarding specified excluded individuals.

1. Former Foster Care Children

Section 1902(xx)(9)(A)(ii)(I) of the Act provides that an individual “who is described in” section 1902(a)(10)(A)(i)(IX) of the Act, which refers to the eligibility group serving former foster care children (FFCC group), is a specified excluded individual. The FFCC group generally serves individuals who were enrolled in Medicaid while in foster care, then exited foster care (or “aged out”) without an adoption or other permanency, and are under age 26. The FFCC group was originally limited to individuals who had been in foster care in the State in which they subsequently sought Medicaid coverage and were not described in any other mandatory eligibility groups under section 1902(a)(10)(A)(i)(I) through (VII) of the Act. Section 1002(a) of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act; Pub. L. 115–271) modified the original eligibility criteria

for the FFCC group in section 1902(a)(10)(A)(i)(IX) of the Act to expand eligibility in the group to individuals who had been in foster care in other States and who may be otherwise described in a separate mandatory eligibility group under section 1902(a)(10)(A)(i)(I) through (VII) of the Act (so long as they are not enrolled in such other group). However, the amendment was effective exclusively for those individuals who turn age 18 on or after January 1, 2023. This means that, under the State plan requirements, slightly different eligibility criteria for the FFCC group apply to individuals under age 26 who turned age 18 on or before December 31, 2022, and those who turn age 18 on or after January 1, 2023.⁴⁵

We have considered whether the reference in section 1902(xx)(9)(A)(ii)(I) of the Act to the FFCC group encompasses both the original version and SUPPORT Act version of section 1902(a)(10)(A)(i)(IX) of the Act, or if it is specific only to the latter one. We are interpreting section 1902(xx)(9)(A)(ii)(I) of the Act to apply the exclusion to individuals who meet the eligibility criteria under the SUPPORT Act, regardless of when they turned age 18, for the following reasons.

The phrase “described in” could be read to exactly mirror the phased-in implementation of the eligibility criteria in section 1902(a)(10)(A)(i)(IX) of the Act and apply the relevant criteria to individuals based on when they turned age 18 for the purpose of the specified excluded individual category. That means, in reference to youth formerly in foster care, an individual under age 26 who turned age 18 before January 1, 2023, would only be a specified excluded individual if he or she meets the original criteria for the FFCC group (specifically: in the same State and not eligible for another group). Someone under age 26 who turned age 18 on or after January 1, 2023, would be a specified excluded individual if he or she meets the expanded criteria for the FFCC group under the SUPPORT Act.

However, we do not believe this is the best reading of section 1902(xx)(9)(A)(ii)(I) of the Act, because the Act directs an eligibility hierarchy for the FFCC group. That means that a strict reading of the exclusion is likely to create an empty exclusion category. Clause (XVII) in the language following section 1902(a)(10)(G) of the Act provides that, “. . . if an individual is

described in subclause (IX) of subparagraph (A)(i) and is also described in subclause (VIII) of that subparagraph, the medical assistance shall be made available to the individual through subclause (IX) instead of through subclause (VIII).” This language means that individuals eligible for both the adult group and the FFCC group must be enrolled in the FFCC group. This eligibility hierarchy means that a strict reading of “described in” in section 1902(xx)(9)(A)(ii)(I) of the Act that is equivalent to “eligible for” the FFCC group per the SUPPORT Act phase-in of the eligibility criteria by age would render the exclusion meaningless as a null set of individuals. Under that reading, by operation of the language following section 1902(a)(10)(G) of the Act, all the individuals who are eligible for the FFCC group would by definition not be in the adult group and thus never would be applicable individuals to whom the exclusion category might apply.

Because a strict reading of the reference to section 1902(a)(10)(A)(i)(IX) of the Act in section 1902(xx)(9)(A)(ii)(I) would render that exclusion category a nullity, we interpret the exclusion to apply to persons meeting the current SUPPORT Act definition of the FFCC group, even in circumstances where they would not qualify for eligibility under section 1902(a)(10)(A)(i)(IX) of the Act due to when they turned 18.

This interpretation also furthers administrative simplicity. The population of individuals formerly in foster care is relatively small; and the population of individuals formerly in foster care who do not meet the State plan requirements is even smaller. For example, some States operating section 1115 demonstrations to apply the SUPPORT Act criteria to eligible individuals who turned 18 before January 1, 2023, report very low enrollment numbers (sometimes in the single digits). The administrative work for States to identify and apply the correct eligibility criteria to the population is high compared to the small size of the population. We implement this definition at new § 435.554(c)(1).

This policy means that States must use a single set of eligibility criteria, under the SUPPORT Act changes to the FFCC group, for this category of specified excluded individual, regardless of whether the individual turned age 18 on or after January 1, 2023. Thus, an individual in the adult group or an applicable section 1115 demonstration may be a specified excluded individual as long as he or she meets the criteria for an individual

⁴⁵ CMCS State Health Official (SHO) letter #22–003, “Coverage of Youth Formerly in Foster Care in Medicaid.” (December 16, 2022). Available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22003.pdf>.

described in the FFCC group: (1) is under age 26; (2) is not enrolled in an eligibility group described in section 1902(a)(10)(A)(i)(I) through (VII) of the Act, even if they meet the eligibility requirements for such group; (3) was in foster care under the responsibility of any State upon attaining age 18 (or such higher age as the State has elected in its title IV–E plan); and (4) was enrolled in Medicaid in any State while in such foster care. For example, suppose an individual ages out of foster care (while enrolled in Medicaid) at age 21 in State A in 2024 and subsequently moves to State B. Because this individual turned age 18 in 2021, the SUPPORT Act rules for the FFCC group do not apply to the individual. State B covers the adult group but does not have a section 1115 demonstration to cover former foster care youth from other States. When the individual applies for Medicaid in State B, he meets the eligibility requirements for the adult group, and the State enrolls him in that group. In 2027, the individual is in the adult group and still under age 26. Because the individual meets the current description of the FFCC group, despite not being enrolled in the group, the individual is a specified excluded individual and not subject to the community engagement requirement.

2. American Indians

Section 1902(xx)(9)(A)(ii)(II) of the Act defines as specified excluded individuals an individual “who: (aa) is an Indian or Urban Indian (as such terms are defined in paragraphs (13) and (28) of section 4 of the Indian Health Care Improvement Act; (bb) is a California Indian described in section 809(a) of such Act; or (cc) has otherwise been determined eligible as an Indian for the Indian Health Service under regulations issued by the Secretary.” CMS has previously issued regulations that define “Indian” to implement various protections for individual Indians, Indian tribes, and tribal organizations as it relates to Medicaid premiums and cost sharing, as required by sections 1916(j), 1916A(b)(3)(A)(vii), and 1916A(b)(3)(B)(x) of the Act.⁴⁶ The existing definition at § 447.51 incorporates each of the specific groups listed in section 1902(xx)(9)(A)(ii)(II)(aa) through (cc) of the Act; therefore, we adopt the existing definition of “Indian” at § 447.51 for the community engagement exclusion at the new § 435.554(c)(2). In other places throughout this IFC, we refer to this

population as American Indians. We believe adopting this definition will promote alignment with existing Medicaid protections for American Indians and will allow States to use existing data used for cost sharing to effectuate this community engagement exclusion. Notably, unlike other exclusions which may change from month to month or be time-limited, States will not be required to (and may not) reverify someone’s status as an American Indian for exclusion from the community engagement requirement.

3. Parent, Guardian, Caretaker Relative, or Family Caregiver of a Dependent Child 13 Years of Age and Under or a Disabled Individual

Section 1902(xx)(9)(A)(ii)(III) of the Act establishes an exclusion for parents, guardians, caretaker relatives, and family caregivers (as defined in section 2 of the Recognize, Assist, Include, Support, and Engage Family Caregivers Act of 2017 (RAISE Family Caregivers Act; Pub. L. 115–119), of a dependent child 13 years of age and under or a disabled individual. The terms “caretaker relative” and “dependent child” are existing Medicaid terms defined in regulation that we are building upon for purposes of this exclusion. The terms parent, guardian, family caregiver, and disabled individual are either new to Medicaid, or are not defined in regulation to determine Medicaid eligibility. Each category of excluded individuals established by section 1902(xx)(9)(A)(ii)(III) of the Act is defined in relation to a dependent child aged 13 and under or a disabled individual. We define the terms caretaker relative, dependent child, disabled individual, family caregiver, guardian and parent at § 435.554(a). For example, as we describe in more detail below, for purposes of the exclusion at 1902(xx)(9)(A)(ii)(III) of the Act, we are defining dependent child at § 435.554(a) to mean “a child 13 years of age or under who relies on another individual for care” and all specified excluded individual-related references to dependent child throughout the remainder of this preamble reflect this regulatory definition. Additionally, to qualify as a specified excluded individual, those meeting the definition of family caregiver at § 435.554(a) must also meet certain criteria specified at new § 435.554(c)(3)(i).

a. Definition of Caretaker Relative

Current CMS regulations define a caretaker relative at § 435.4. The “caretaker relative” definition generally implements section 1905(a)(ii) of the

Act (“relatives specified in section 406(b)(1) with whom a child is living if such child is (or would, if needy, be) a dependent child under part A of title IV.”). Such references to title IV–A of the Act are to the former Aid to Families with Dependent Children (AFDC) program, as it existed on July 16, 1996. AFDC was replaced with the TANF block grant by PRWORA. In de-linking receipt of cash assistance from Medicaid, PRWORA also established categorical eligibility for low-income families under section 1931 of the Act. The definition of caretaker relative is used for the population of categorically needy parents and other caretaker relatives that is now implemented in regulations at § 435.110. Section 435.4 defines a caretaker relative as a parent or other relative (related by blood, adoption, or marriage) living with a dependent child, who assumes primary responsibility for the dependent child’s care. Section 435.4 specifies who qualifies as a relative for such purposes, and includes a child’s father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, aunt, uncle, first cousin, nephew, niece, or the spouse of such parent or relative, even after the marriage is terminated by death or divorce. The definition also provides States the option to include other adults: additional relatives of the child by blood (including those of half-blood), adoption, or marriage; a domestic partner of the parent or other caretaker relative; or any adult with whom the child is living and who assumes primary responsibility for the child’s care.

Use of the term “caretaker relative” in our regulations describes a specific relationship with a child that defines the categorical Medicaid eligibility group at § 435.110.⁴⁷ Because States have experience implementing the § 435.110 eligibility group and associated policies based on the existing definition in § 435.4, we believe it is appropriate to align the definition of “caretaker relative” in section 1902(xx)(9)(A)(ii)(III) of the Act with that definition. However, we acknowledge that, in addition to a dependent child age 13 or under, the exclusion also applies to caretaker relatives of a “disabled individual” (defined later in this section). Therefore, if we were to use the existing definition at § 435.4 without any changes, the definition would not align with the exclusion in

⁴⁶ Medicaid Program; Premiums and Cost Sharing 75 FR 30243 (May 28, 2010). <https://www.federalregister.gov/d/2010-12954>.

⁴⁷ Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010 77 FR 17144 (March 23, 2012). <https://www.federalregister.gov/d/2012-6560>.

the statute. As such, for purposes of this exclusion from the community engagement requirement, at a new § 435.554(a) we establish a definition of caretaker relative, based on the relationships listed in the existing definition at § 435.4, to apply the definition to caretaker relatives of both dependent children and disabled individuals, as established in section 1902(xx)(9)(A)(ii)(III) of the Act. We also specify additional relationships (husband, wife, son, daughter, stepson, stepdaughter, grandson, granddaughter) under which individuals could qualify as a caretaker relative of a disabled individual (these additional relationships are not relevant for dependent children age 13 and under because of their age). Like the definition in § 435.4, the new definition requires that the caretaker relative assume primary responsibility for the dependent child's or disabled individual's care and live with the dependent child or disabled individual who is receiving the care.

If a State has elected to expand the definition of "caretaker relative" to additional relatives under paragraph (3) of the caretaker relative definition at § 435.4, the State must apply the same elections when determining whether an individual is a "caretaker relative" of a dependent child or a disabled individual for purposes of the exclusion described at section 1902(xx)(9)(A)(ii)(III) of the Act. We believe that aligning the elections of additional relatives across the eligibility group for parents and other caretaker relatives at § 435.110 and this community engagement exclusion would prevent beneficiary confusion and potential disruption of coverage for certain caretakers who transition between the parent and caretaker relative group and a group consisting of applicable individuals. We also believe alignment will create administrative simplicity for States and better understanding of the policy for beneficiaries.

For example, suppose a beneficiary is the second cousin of, and lives with, a 10-year-old child who is dependent on the beneficiary for care. Because their State elected the option under paragraph (3) of the caretaker relative definition at § 435.4, the beneficiary is eligible for the "parents and other caretaker relatives" eligibility group. The beneficiary subsequently experiences an increase in unearned income and is determined ineligible for the "parents and other caretaker relatives" group and is then determined eligible for the adult group. If the State uses a consistent definition of

relationships for caretaker relative, the State would determine the individual to be a specified excluded individual under the exclusion described at section 1902(xx)(9)(A)(ii)(III) of the Act. The beneficiary would not be subject to the community engagement requirement, and the State would not need to determine whether the individual demonstrated compliance, which is consistent with the beneficiary's previous status as a caretaker relative. However, if the State used a different relationship election for the exclusion, the State would need to conduct a separate analysis of the relationship between the adult and the dependent child, adding to the complexity of the redetermination process for the State and potentially resulting in confusion or a disruption of coverage for the caretaker relative.

b. Definition of Parent

Because the statute separately lists "parent" in addition to "caretaker relative" in section 1902(xx)(9)(A)(ii)(III) of the Act, we interpret "parent" to mean something different from a "caretaker relative." Section 1902(xx)(9)(A)(ii)(III) of the Act does not define "parent," and parenthood is generally governed by State law. Therefore, at new § 435.554(a), we define for purposes of section 1902(xx)(9)(A)(ii)(III) of the Act to mean an individual with the legal status of a mother or father, including by adoption, in accordance with applicable State law, to another individual, which is consistent with common definitions of the term.⁴⁸ Consistent with other groups listed in the exclusion established at section 1902(xx)(9)(A)(ii)(III) of the Act, the parent must provide some level of care to the dependent child or disabled individual for whom they are a parent. For example, an estranged parent without a relationship with their child would not be considered a specified excluded individual under the category of parent. We recognize that many parents who live with and are primarily responsible for their dependent child or adult disabled child will also meet the definition in this regulation of "caretaker relative." This definition of parent provides for parents who do not meet the definition of "caretaker relative" but who meet this definition of "parent" to be considered a specified excluded individual.

⁴⁸ Black's Law Dictionary (12th ed. 2024) s.v. "Parent," accessed May 1, 2026.

c. Definition of Guardian

Section 1902(xx)(9)(A)(ii)(III) of the Act also separately lists a "guardian," which is not defined under section 1902(xx) of the Act or defined elsewhere in the Act or CMS regulations. At § 435.554(a), we define "guardian" for purposes of section 1902(xx)(9)(A)(ii)(III) of the Act to mean an adult appointed by a court to care for and make personal decisions on behalf of an individual who cannot care for themselves, which is consistent with the common meaning of the term.⁴⁹

Because guardianship is governed by State law, we considered how other Federal agencies refer to or define guardianship when developing our definition. The Department of Justice (DOJ) describes guardianship as the appointment by a court of a person or entity to make personal, property decisions, or both for an individual whom the court finds cannot make decisions for themselves.⁵⁰ DOJ also explains that each State has its own set of guardianship laws, and terminology may vary.⁵¹

In the definition of "guardian" we establish in § 435.554(a), an individual has the legal status of a "guardian" when the individual is appointed by a court. DOJ's description also refers to personal and/or financial responsibilities. For the definition established at § 435.554(a), we specify that a guardian has been appointed by a court to care for and make personal decisions for an individual who cannot care for themselves. We believe that guardianship as it relates to the responsibility for another person's care, rather than financial responsibilities, is more aligned with the purposes of the exclusion.

d. Definition of Family Caregiver

Section 1902(xx)(9)(A)(ii)(III) of the Act includes a "family caregiver (as defined in section 2 of the RAISE Family Caregivers Act) of a dependent child 13 years of age and under or a disabled individual" as a specified excluded individual.

The RAISE Family Caregivers Act directed the Secretary of the U.S. Department of Health and Human Services (HHS) to develop and make

⁴⁹ Merriam-Webster Dictionary Online, s.v. "Guardian," accessed March 21, 2026, <https://www.merriam-webster.com/dictionary/guardian>.

⁵⁰ "Guardianship" U.S. Department of Justice, accessed on March 3, 2026, <https://www.justice.gov/elderjustice/guardianship>.

⁵¹ "Guardianship: Key Concepts and Resources." U.S. Department of Justice, last modified on February 18, 2026, <https://www.justice.gov/elderjustice/guardianship-key-concepts-and-resources>.

publicly available a family caregiving strategy that identified recommended actions for recognizing and supporting family caregivers. To guide the development of this strategy, Section 2 of the RAISE Family Caregivers Act defined “family caregiver” as an adult family member or other individual who has a significant relationship with, and who provides a broad range of assistance to, an individual with a chronic or other health condition, disability, or functional limitation. This definition encompasses a broad range of caregiver relationships and assistance provided to capture the full landscape of caregiving in the U.S. to inform the national caregiving strategy.

Section 1902(xx)(9)(A)(ii)(III) of the Act requires CMS to use the RAISE Family Caregivers Act definition of family caregiver when determining whether an individual qualifies as a specified excluded individual, but it also limits care recipients to “a dependent child 13 years of age and under or a disabled individual” (both of which are defined later in this section). Because the care recipients specified in section 1902(xx)(9)(A)(ii)(III) of the Act differ from those referenced in the RAISE Family Caregivers Act definition, it is necessary to establish a definition of “family caregiver” for purposes of identifying specified excluded individuals that incorporates applicable components of the RAISE Family Caregivers Act definition while aligning with the care recipients specified in 1902(xx)(9)(A)(ii)(III) of the Act. As such, at new § 435.554(a), we define family caregiver as an adult family member or other individual who has a significant relationship with, and who provides care within a broad range of assistance to, a dependent child or a disabled individual. This definition of family caregiver largely aligns with the RAISE Family Caregivers Act definition but includes modifications to support implementation of section 1902(xx)(9)(A)(ii)(III) of the Act, as further discussed below.

We are generally incorporating the significant relationship and activity-based components of the RAISE Family Caregivers Act definition into the definition of family caregiver at § 435.554(a), recognizing that a family caregiver is not limited to legally recognized relatives or members of the same household and that providing a “broad range of assistance” (as specified in the RAISE Family Caregivers Act definition) to an individual may consist of any number of activities necessitated by individual health status. However, the RAISE Family Caregivers Act definition encompasses caregiving for a

broad range of individuals including those with a chronic health condition, disability, or functional limitation while section 1902(xx)(9)(A)(ii)(III) of the Act expressly limits the exclusion to family caregivers “of a dependent child age 13 years and under or a disabled individual.” We do not interpret the statutory cross-reference to the RAISE Family Caregivers Act definition of family caregiver in section 1902(xx)(9)(A)(ii)(III) of the Act as authorizing expansion of the community engagement exclusion beyond the care recipient populations expressly specified in that section of the Act. In addition, because “a dependent child 13 years of age and under” is specified in section 1902(xx)(9)(A)(ii)(III) but is not referenced in the RAISE Family Caregivers Act definition, we are adding this cohort of individual to the set of care recipients included in our definition of family caregiver at § 435.554(a).

Together, these modifications appropriately harmonize the RAISE Family Caregivers Act definition of family caregiver with the scope of care recipients specified at section 1902(xx)(9)(A)(ii)(III) of the Act and ensure that the exclusion is applied only to family caregivers who provide assistance to a dependent child or a disabled individual. (Notably, as outlined further in this section, there is no upper age limit for the “disabled individual” referenced in section 1902(xx)(9)(A)(ii)(III) of the Act, meaning that individuals of any age with a disability would qualify under that term.)

Additionally, to reflect the varied and individualized nature of caregiving arrangements, we opted to modify the RAISE Family Caregivers Act definition slightly in § 435.554(a) to refer to “*care within* a broad range of assistance” to ensure that States do not require that a family caregiver provide *multiple* forms of assistance to a dependent child or a disabled individual to qualify as a specified excluded individual. For additional details about the criteria a family caregiver must meet to qualify as a specific excluded individual, see section II.E.3.h. of this IFC.

e. Definition of Dependent Child

Section 1902(xx)(9)(A)(ii)(III) of the Act provides an exclusion from the community engagement requirement for an individual who is a parent, guardian, caretaker relative, or family caregiver of a “dependent child 13 years of age and under.” In § 435.554(a), we define dependent child to mean a child 13

years of age or under who relies on another individual for care.

“Dependent child” already has a specific Medicaid definition; in developing definitions for this community engagement exclusion, we considered whether it is appropriate to apply the existing definition of dependent child, and decided it is not, for the reasons discussed below.

In 2012, we established a definition of a “dependent child” in § 435.4,⁵² noting that our definition was grounded in section 1931 of the Act. (“Consistent with section 1931 of the Act, we propose Medicaid definitions of ‘caretaker relative’ and ‘dependent child’ at § 435.4”).⁵³ In implementing the mandate under subsections (a) and (b) of section 1931 of the Act to apply the eligibility requirements of the former AFDC program (as it existed on July 16, 1996) to low-income families, the definition of “dependent child” in § 435.4 incorporates each State’s choice with regard to the AFDC “deprivation” requirement. A dependent child under § 435.4 must be “deprived of parental support by reason of the death, absence from the home, physical or mental incapacity, or unemployment of at least one parent, unless the State has elected in its State plan to eliminate such deprivation requirement.” When we implemented the final rule defining “caretaker relative” in 2012, we noted that many States had elected to eliminate the deprivation requirement from their definition of “dependent child,” applying only an age standard to the term. In addition, section 1902(xx)(9)(A)(ii)(III) of the Act provides an exclusion from the community engagement requirement for an individual who is a parent of a dependent child 13 years of age and under, which is in conflict with the deprivation requirement. Because section 1902(xx)(9)(A)(ii)(III) of the Act does not refer to section 1931 of the Act and is in conflict with the deprivation requirement in § 435.4, and because most States have eliminated the deprivation requirement, we decided against adopting the existing definition of dependent child at § 435.4 for purposes of section 1902(xx)(9)(A)(ii)(III) of the Act.

In establishing a definition of dependent child for purposes of exclusion from the community

⁵² Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010. 77 FR 17144 (March 23, 2012). <https://www.federalregister.gov/d/2012-6560>.

⁵³ Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010. 76 FR 51148 (August 17, 2011). <https://www.federalregister.gov/d/2011-20756>.

engagement requirement, we also considered how “dependent” is defined as it relates to the work requirements in the SNAP program. Notably, the WFTC legislation made changes to the exemptions for the SNAP time limit work requirement that align with the exclusion established at section 1902(xx)(9)(A)(ii)(III) of the Act. Section 10102 of the WFTC legislation amended section 6(o) of the Food and Nutrition Act of 2008 to apply an exemption from the time limit work requirement to “a parent or other member of a household with responsibility for a dependent child under 14 years of age” (the exemption previously applied to those responsible for a dependent under 18 years of age). Unlike the existing definition in Medicaid, SNAP does not apply a deprivation requirement for a child 13 years of age and under to be considered a dependent.

While we determined it was not appropriate to apply the deprivation requirement to the new definition of “dependent child” at § 435.554(a) for the reasons we discuss in the preceding paragraphs, we recognize that dependent children still rely on adults for care (for example, housing, food, medical care, education, etc.). Therefore, we include a child’s reliance on another individual for care in the new definition. Because most States have removed their deprivation requirement for dependent children under Medicaid and to align policy with SNAP (as was done in the WFTC legislation that aligned the age limits for dependent children for community engagement exclusions in Medicaid and time-limit work requirement exemptions in SNAP), we establish a new definition of “dependent child” at § 435.554(a) to mean a child 13 years of age or under who relies on another individual for care, and only for the purpose of determining if a person is a specified excluded individual under section 1902(xx)(9)(A)(ii)(III) of the Act.

f. Definition of Disabled Individual

Section 1902(xx)(9)(A)(ii)(III) of the Act provides an exclusion from the community engagement requirement for an individual who is a parent, guardian, caretaker relative, or family caregiver of a disabled individual. The statute does not define the term “disabled” or “disabled individual,” nor does it include a cross-reference to an existing statutory or regulatory definition of disability. Instead, Section 1902(xx)(9)(A)(ii)(III) of the Act focuses on the caregiver and that person’s relationship to the care recipient, not on whether the care recipient has previously been determined disabled by

the Social Security Administration (SSA) or been identified as disabled within the Medicaid program or by other eligibility criteria established by Federal law.

In developing a regulatory definition, we considered several possible approaches. First, we considered adopting the SSA definition of disability used for purposes of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). That definition generally requires that a person be unable to engage in substantial gainful activity due to a medically determinable impairment expected to last at least 12 months or result in death. We determined that this standard is closely tied to cash assistance eligibility and work incapacity determinations and may not be well aligned with the structure or purpose of this caregiver exclusion. Section 1902(xx)(9)(A)(ii)(III) of the Act does not require that the disabled individual be unable to work, nor does it condition the exclusion on the disabled individual’s receipt of SSI or SSDI. Limiting the exclusion to disabled individuals with a formal SSA disability determination could exclude individuals who provide assistance to disabled individuals with a broad range of functional limitations whom the statute appears to encompass.

Second, we considered other disability definitions used in Federal statutes and programs, including the definition of “individual with a disability” under the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). These statutes are generally aligned in that an individual has a disability if the individual has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. These definitions are not tied to work incapacity or eligibility for cash assistance and instead focus on functional limitation. The ADA definition is also a well-established Federal standard that applies across a wide range of programs and contexts and is familiar to States and interested parties.

Finally, we considered permitting States to define “disabled individual” for purposes of the exclusion. However, the absence of a Federal standard could lead to inconsistent application across States and uncertainty for beneficiaries.

After considering these options, we are adopting a definition of disabled individual at new § 435.554(a) that aligns with the ADA definition of “disability” at 28 CFR 35.108. Under

this definition, disabled individual means an individual who meets the ADA definition of disability at 28 CFR 35.108. An individual need not be eligible for Medicaid or other Federal programs on the basis of a disability to be a disabled individual under this definition.

As previously stated, section 1902(xx)(9)(A)(ii)(III) of the Act does not specify an upper age limit when referencing a “disabled individual.” This term could, therefore, include an older adult who requires assistance of varying scope in performing activities of daily living (ADLs) (bathing, dressing, toileting, eating, etc.) or other activities that keep older adults living at home and participating in community life. We encourage States to ensure that educational materials on this community engagement exclusion are sufficiently clear so that individuals providing supports to older adults understand that they could qualify as a specified excluded individual through the family caregiver component at section 1902(xx)(9)(A)(ii)(III) of the Act. We also acknowledge that there is no lower age limit to “disabled individual,” meaning that the term could apply to individuals from birth, although we note that there is overlap through the age of 13 with references in this same exclusion category to “dependent child 13 years of age and under.”

g. Applicability of Parent, Caretaker Relative, Guardian, or Family Caregiver Exclusion to Multiple Individuals in a Residence

Interested parties requested that we explain how the exclusion under section 1902(xx)(9)(A)(ii)(III) of the Act will apply in homes with multiple individuals who may be a parent, caretaker relative, guardian, or family caregiver. We considered limiting the exclusion to one person per residence or allowing multiple individuals who reside together to qualify for the exclusion. In Medicaid, there is no precedent for limiting the number of individuals who reside together and are eligible for an exclusion to the application of a policy (for example, cost sharing exemptions, outlined at § 447.56), as most existing exclusions/exceptions in Medicaid are established based on an individual’s eligibility factors, not (like this exclusion) their relation to another individual. Further, the statutory language at section 1902(xx)(9)(A)(ii)(III) does not specify that to qualify as a specified excluded individual there must be a one-to-one ratio of the individual to the person receiving care.

We also considered how FNS within USDA implements similar exemptions for SNAP work requirements. The time limit work requirement under SNAP exempts individuals who have someone under age 14 in their SNAP household.⁵⁴ In SNAP, a household is defined as everyone who lives together and purchases and prepares meals together.⁵⁵ Although the SNAP terminology for a household is slightly different from the Medicaid terminology we describe in this section, FNS does not limit these exemptions from SNAP work requirements to a single person in a household. Instead, the time limit exemption applies to everyone living in the SNAP household with someone 13 years of age and under. This approach does not require SNAP programs to determine if there are other caregivers caring for the same dependent child when determining exemptions from the time limit work requirement.

We acknowledge that multiple individuals who could qualify for this exclusion may reside together. Consistent with our interpretation of the statute and existing SNAP policy, we are promulgating at new § 435.554(c)(3)(ii) a policy that allows multiple parents, caretaker relatives, guardians, and/or family caregivers in a single residence to qualify for the exclusion, provided that they meet the definitions and criteria discussed in this section. CMS believes that this policy closely aligns with what is allowed under SNAP and is consistent with section 1902(xx) of the Act, while minimizing administrative burden for States and beneficiaries.

h. Criteria for the Family Caregiver Exclusion

We interpret the inclusion of family caregivers as a component of the exclusions at section 1902(xx)(9)(A)(ii)(III) of the Act as recognizing not only the critical role family caregivers play, but also that these caregiving responsibilities, when regularly occurring and not solely incidental in nature, meaningfully limit a family caregiver's ability to participate in work or other community engagement activities. This interpretation is supported by the cross-reference to the RAISE Family Caregivers Act's definition of family caregiver, which emphasizes the significant relationship between the caregiver and the care recipient and

recognizes that caregiving involves the provision of a broad range of assistance.

In implementing this provision, we considered whether to adopt a specific, uniform definition of "significant relationship" but opted not to do so as we recognize that caregiving relationships and the assistance provided varies widely. However, to give practical effect to the significant relationship element of the RAISE Family Caregivers Act definition of family caregiver while avoiding an overbroad application of the exclusion, we are establishing criteria to ensure the caregiving relationship is significant enough to justify exclusion from the community engagement requirement. States must apply these criteria to identify caregiving relationships that are sufficiently significant to qualify the family caregiver as a specified excluded individual through section 1902(xx)(9)(A)(ii)(III) of the Act. These criteria do not redefine who a family caregiver is but instead should be applied when States determine if an individual who meets the family caregiver definition at § 435.554(a) qualifies as a specified excluded individual. These criteria apply to all family caregivers regardless of whether the individual is a paid or an unpaid family caregiver, as the purpose of the exclusion is to recognize the time and responsibility associated with being a family caregiver, regardless of compensation.

To simplify State administration and reduce beneficiary confusion, the criteria that pertain to a "relative," as described below, are structured to align with the relationships recognized under the caretaker relative definition as discussed earlier in this section and defined at § 435.554(a). Given that section 1902(xx)(9)(A)(ii)(III) of the Act lists family caregivers and caretaker relatives as separate and distinct groups subject to the exclusion, we are not requiring that a family caregiver reside with or assume primary responsibility for the care of the dependent child or disabled individual. This reflects the varied and individualized nature of family caregiving arrangements and ensures the family caregiver exclusion operates separately and apart from the caretaker relative exclusion while allowing States to build on existing administrative infrastructure and relationship determinations.

As implemented at a new § 435.554(c)(3)(i), an individual who is a family caregiver as defined at § 435.554(a) is a specified excluded individual if he or she meets one of the following criteria:

1. The individual primarily resides with a dependent child or disabled individual, as these terms are defined earlier, for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature;
2. The individual is a relative (as specified in the "caretaker relative" definition at § 435.554(a) without regard to the requirements to live with and to assume primary responsibility) of a dependent child or disabled individual, as these terms are defined earlier, for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, and with whom he or she does not reside; or
3. The individual does not reside with and is not a relative (as specified in the "caretaker relative" definition at § 435.554(a) without regard to the requirements to live with and to assume primary responsibility) of a dependent child or disabled individual, as these terms are defined earlier, for whom he or she provides not less than 80 hours of assistance that is not solely incidental in nature per month.

We view shared residence with the care recipient and familial relationship to the care recipient as consistent with ongoing caregiving responsibility and as strong evidence of the "significant relationship" specified in the RAISE Family Caregivers Act definition of family caregiver. According to Pew Research Center, 10 percent of all U.S. adults say they are a caregiver for a parent age 65 or older.⁵⁶ The full extent of the care provided by family caregivers to individuals with whom they live or to whom they are related is difficult to fully quantify, as often this care and support is unrecognized and unpaid. Family caregivers who live with the recipient of that care are more likely to be involved in daily, more intensive, round-the-clock care, assistance, or supervision. Relatives of care recipients are also often called upon to provide extensive support at all hours, particularly if they live close to the care recipient. Caring for relatives occurs both within and across households, and with more older adults choosing to remain in their own homes and communities, the prevalence of long-distance caregivers has increased to approximately 15 percent (5 to 7 million) of all family caregivers.⁵⁷

⁵⁶ Parker, K. "Family Caregiving in an Aging America." Pew Research Center, February 2026. https://www.pewresearch.org/wp-content/uploads/sites/20/2026/02/ST_2026.2.26_family-caregivers_report.pdf.

⁵⁷ Sadick, B. "How to Provide Long-Distance Caregiving." U.S. News, June 3, 2025. <https://health.usnews.com/senior-care/articles/how-to-provide-long-distance-caregiving>.

⁵⁴ SNAP Work Requirements. U.S. Department of Agriculture Food and Nutrition Services, last updated August 29, 2025, <https://www.fns.usda.gov/snap/work-requirements>.

⁵⁵ 7 CFR 273.1.

For these reasons, we believe that co-residence and familial relationship are sufficient indicators to establish an ongoing significant caregiving relationship, particularly given the often personal and intense nature of the care provided by family caregivers who live with or are related to the care recipient, the regularly occurring provision of that care, and the impact of that care to the care recipient. As such, family caregivers who live with or are related to a dependent child or a disabled individual for whom they provide assistance that occurs on a regular basis and is not solely incidental in nature are not required to demonstrate provision of a minimum number of caregiving hours under this regulation. As described in section II.L.7.c. of this IFC, States are required to obtain sufficient information, including documentation when applicable, to verify an individual's status as a specified excluded individual through the family caregiver component of section 1902(xx)(9)(A)(ii)(III) of the Act.

We also recognize that some individuals provide caregiving supports to non-relatives with whom they do not reside. While the majority of family caregivers provide care for a relative, 11 percent care for a friend, neighbor, or other nonrelative.⁵⁸ The intensity of care provided in these situations varies widely from limited, episodic, or incidental assistance to substantial, ongoing hands-on support. While we recognize that even limited assistance may help an individual with a disability remain in their own home, as noted at the beginning of this section, we interpret the inclusion of family caregivers as a component of the exclusions at section 1902(xx)(9)(A)(ii)(III) of the Act as recognizing individuals whose caregiving responsibilities meaningfully limit their ability to participate in work or other community engagement activities. As such, we believe it is necessary to establish a clear and practical standard for family caregivers who do not live with, and are not related to, the recipient of the care he or she provides.

The 80-hour per month threshold reflects a sustained and regular commitment of time providing care, roughly equivalent to an average of 20 hours per week. This level of caregiving demonstrates a significant relationship with the care recipient and indicates an active caregiving role comparable to

part-time employment, job training, or other community activities that would otherwise satisfy the community engagement requirement. The threshold also serves a program integrity function by reducing the likelihood that an individual will qualify as a specified excluded individual under the family caregiver component at section 1902(xx)(9)(A)(ii)(III) of the Act based on informal or sporadic assistance, helping ensure the exclusion is reserved for individuals with caregiving responsibilities that are significant enough to justify exclusion from the community engagement requirement.

We also considered State administration of these requirements, and the 80-hour threshold also provides a clear, objective benchmark that States can administer consistently. Without a defined minimum threshold of caregiving, States would be required to make subjective judgments about the sufficiency of caregiving activities, increasing the risk of inconsistent decisions and uneven application across States. This standard reduces subjectivity, supports more uniform implementation across States, and promotes more predictable outcomes for States and beneficiaries.

We recognize that a person who meets the family caregiver definition in § 435.554(a) might provide significant and meaningful caregiving to a dependent child or a disabled individual to whom he or she is neither related nor resides with, but that he or she might not qualify as a specified excluded individual because the hours of assistance provided do not reach the 80-hour per month threshold. Such a person would be an applicable individual unless eligible for other exclusions. However, as noted earlier in section II.C.1. of this IFC, the hours of assistance provided by such an individual would count as unpaid work under § 435.552(b) and the individual would only need to engage in additional activities sufficient to reach the 80-hour threshold to comply with the community engagement requirement. For example, if an individual provides 55 hours per month of assistance to a non-relative who he or she does not live with, those 55 hours would count towards compliance with the community engagement requirement, and the family caregiver would need 25 additional hours a month of the activities listed in section 1902(xx)(2) of the Act, such as community service or participation in an educational program, to demonstrate compliance.

To summarize, we are implementing at new § 435.554(c)(3)(i) the family caregiver component of the exclusion at

section 1902(xx)(9)(A)(ii)(III) of the Act by considering the following to be specified excluded individuals: individuals who meet the definition of a family caregiver at § 435.554(a) who reside with or are a relative (as specified in the caretaker relative definition at § 435.554(a) without regard to the requirements to live with or to assume primary responsibility) of a dependent child or a disabled individual for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, or who provide not less than 80 hours of assistance that is not solely incidental in nature per month to a dependent child or a disabled individual to whom they are not related and with whom they do not reside. We believe this approach allows us to give practical effect to the “significant relationship” element of the RAISE Family Caregivers Act without constraining States to a single definition and that the criteria are reliable indicators that a caregiving relationship is ongoing, meaningful, and not merely incidental or episodic. Co-residency and familial relationship generally reflect an inherent level of connection and responsibility, while the minimum hours threshold for family caregivers who do not live with and are not related to a dependent child or disabled individual ensures that the family caregiver exclusion applies where there is a demonstrable and sustained caregiving role. The criteria also provide clear standards while recognizing and preserving the varied and individualized nature of caregiving arrangements.

Finally, as States implement the family caregiver component of the exclusion at section 1902(xx)(9)(A)(ii)(III) of the Act, they must ensure that they are conducting outreach consistent with the Medicaid outreach requirements at § 435.561. We also encourage States to consider general public outreach efforts to complement the required outreach so the public can clearly understand which individuals may qualify as a specified excluded individual under the family caregiver component. Individuals who are family caregivers may not realize that they qualify for an exclusion to the community engagement requirement and will need clear, consumer friendly information to help them understand whether they are excluded. For more information on Medicaid outreach requirements, see § 435.561 and the related discussion in section II.L. of this IFC.

⁵⁸ AARP and National Alliance for Caregiving. (2025). “Caregiving in the U.S.” <https://www.aarp.org/content/dam/aarp/ppi/topics/lts/family-caregiving/caregiving-in-us-2025.doi.10.26419-2/ppi.00373.001.pdf>.

4. Veteran With a Disability Rated as Total

Section 1902(xx)(9)(A)(ii)(IV) of the Act creates an exclusion for veterans with a total disability rating. The statute references 38 U.S.C. 1155, which provides VA the authority to create a schedule for rating disabilities. VA assigns disability ratings based on the severity of a veteran's service-connected condition(s), which is stated as a percentage. For purposes of community engagement, a total, or 100 percent, disability rating from VA is necessary to qualify for the exclusion. VA may assign total disability ratings that are permanent or temporary; either would qualify an individual for the exclusion, if rated at 100 percent. New § 435.554(c)(4) adopts this "veteran with a disability rated as total" definition for purposes of the community engagement exclusion at section 1902(xx)(9)(A)(ii)(IV) of the Act.

Some veterans receive total disability based on individual unemployability (TDIU), which allows veterans with service-connected disabilities to receive 100 percent compensation if they cannot secure or maintain "substantial gainful employment," even if their combined rating is below 100 percent. These veterans, due to receipt of 100 percent compensation, must be treated by States in the same manner as all other veterans who have a combined disability rating of 100 percent, thus meeting the exclusion.

Some veterans will receive a permanent and total (P&T) disability which means that a veteran has a 100 percent (total) disability rating, and their condition is considered static (permanent) with no expectation of improvement. While a veteran only needs a total (100 percent) VA disability rating to meet the exclusion, States are not permitted to reverify a permanent disability determination. Conversely, temporary disabilities assigned by the VA, which are sometimes time-limited or are expected to improve over time, will require reverification at least once every 12 months. For more information about verification requirements and recommended data sources for veterans with total disability ratings, see section II.I.7.d. of this IFC.

5. An Individual Who is Medically Frail or Otherwise has Special Medical Needs

a. Background

The definition of a specified excluded individual at section 1902(xx)(9)(A)(ii)(V) of the Act includes an individual who is medically frail or otherwise has special medical needs (henceforth referred to as medically

frail). Specifically, section 1902(xx)(9)(A)(ii)(V) of the Act provides that specified excluded individuals must include an individual, "(V) who is medically frail or otherwise has special medical needs (as defined by the Secretary), including an individual—(aa) who is blind or disabled (as defined in section 1614 of the Act); (bb) with a substance use disorder (SUD); (cc) with a disabling mental disorder; (dd) with a physical, intellectual or developmental disability that significantly impairs their ability to perform 1 or more ADLs; or (ee) with a serious or complex medical condition." We are defining medically frail individuals as individuals who meet one or more of the five categories identified at section 1902(xx)(9)(A)(ii)(V) of the Act. As described in more detail in section II.E.5.b. of this IFC, at § 435.554(c)(5) we define medically frail individuals for the purposes of the community engagement exclusion.

The community engagement requirement has the potential to empower Medicaid beneficiaries through employment, education, or volunteer service so they can escape isolation and dependency, build confidence, achieve self-sufficiency and prosperity, and improve health. However, this mandatory exclusion from the community engagement requirement protects access to necessary health care services for individuals who are medically frail and may have physical or behavioral health conditions that significantly impair their ability to consistently work or participate in other community engagement activities defined at § 435.552.

Section 1937(a)(2)(B)(vi) of the Act exempts individuals who are medically frail, including individuals eligible under the State plan adult group, from mandatory enrollment in a benchmark or benchmark-equivalent benefit package (which we refer to as an alternative benefit plan (ABP)), that does not offer all services at the same or higher amount, duration, and scope covered under the State's traditional Medicaid State plan. We are not adopting the ABP medically frail definition for purposes of the community engagement medically frail exclusion for the reasons stated in this section of the preamble. While the medically frail exclusions for purposes of ABP and community engagement both apply to individuals eligible under the adult group, they are distinct from each other in that they are in two different sections of the statute that apply to different aspects of the Medicaid program. The medically frail exclusion for the ABP only impacts an

individual's Medicaid benefit package selection, while the medically frail exclusion under the community engagement requirement determines if an individual needs to demonstrate community engagement to maintain Medicaid eligibility.

Section 1937(a)(2)(B)(vi) of the Act provides that individuals who are medically frail should be identified in accordance with regulations issued by the Secretary. That regulation, § 440.315(f), provides that States must identify individuals who are medically frail for purposes of the ABP requirements, and that the State's definition for that purpose must at least include those individuals described in § 438.50(d)(3), individuals with disabling mental disorders (including children with serious emotional disturbances and adults with serious mental illness), individuals with chronic SUDs, individuals with serious and complex medical conditions, individuals with a physical, intellectual or developmental disability that significantly impairs their ability to perform one or more ADLs, or individuals with a disability determination based on Social Security criteria or in States that apply more restrictive criteria than the SSI⁵⁹ program, the State plan criteria.⁶⁰

The ABP definition of medically frail at § 440.315(f) is very similar to the community engagement medically frail definition at section 1902(xx)(9)(A)(ii)(V) of the Act. However, unlike the definition at § 440.315(f), the community engagement medically frail definition specifically includes blind individuals; uses the term "or" instead of "and" for individuals with serious or complex medical conditions; does not include children under the age of 19 described at § 438.50(d)(3); does not make reference to children with serious emotional disturbances and adults with serious mental illness to further describe individuals with disabling mental disorders; does not use the term "chronic" for individuals with SUDs; and does not include individuals with a disability determination based on

⁶⁰ The community engagement requirement does not apply to children under the age of 19 and therefore is not applicable to the individuals described in § 438.50(d)(3) or children with serious emotional disturbances. The regulation at § 438.50(d)(3) includes children under the age of 19 eligible for SSI under Title XVI of the Act; eligible under section 1902(e)(3) of the Act; in foster care or other out-of-home placement; receiving foster care or adoption assistance; or receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of Title V of the Act, and is defined by the State in terms of either program participation or special health care needs.

more restrictive criteria than the SSI program under a State plan.

We are not changing the ABP definition of medically frail and are specifying at § 435.554(c)(5) a separate but similar definition of medically frail for community engagement purposes in this IFC. States continue to have the discretion to include categories of individuals who are not described at § 440.315(f) in their definition of medically frail for purposes of benefit package selection.

Section 1902(xx)(9)(A)(ii)(V) of the Act provides the Secretary with the authority to define the term medically frail for community engagement purposes (as long as the definition includes the five categories specified at section 1902(xx)(9)(A)(ii)(V) of the Act). We are not using our authority at section 1902(xx)(9)(A)(ii)(V) of the Act to add additional categories to the definition of medically frail, as we have not identified any other populations that we believe could reasonably be considered medically frail outside of the five categories identified at section 1902(xx)(9)(A)(ii)(V) of the Act.

Further, unlike medical frailty implemented in ABPs, we are not providing States with the option to add additional categories of people to the definition of medical frailty for community engagement purposes. We considered doing so; however, as we state in the prior paragraph, we are not aware of a category of people that could not reasonably fall under one of the five categories identified at section 1902(xx)(9)(A)(ii)(V) of the Act. We are concerned that there may be more of an incentive for some States to include individuals who would not reasonably be considered medically frail, if we provided States with the option to add additional categories of people to the community engagement medically frail definition. For example, we do not believe it would be reasonable for States to consider an individual who is homeless as medically frail solely on the basis that the individual is homeless, as that circumstance is not a medical condition. However, individuals who are homeless may have a medical condition, such as an SUD or disabling mental disorder, that could qualify them for the medically frail exclusion. Furthermore, we believe that having a standard medically frail definition provides States with a more streamlined approach to medical frailty that will be easier to implement. If we permitted States to add additional categories to the definition of medically frail beyond those identified in the statute, then we would need to establish a process for review and approval of such categories,

which would create burden for both CMS and States. We therefore do not believe limiting the definition of medically frail for community engagement purposes to the five categories identified in the statute will lead to a meaningful difference in the number of individuals who are subject to the community engagement requirement that cannot also meet such requirements.

b. Medically Frail Definition

As noted in section II.E.5.a. of this IFC, consistent with our statutory authority at section 1902(xx)(9)(A)(ii)(V) of the Act, we are defining a medically frail individual at § 435.554(c)(5) as an individual whose physical, mental, or other behavioral health condition significantly impairs the individual's ability to comply with the community engagement requirement in this subpart and who is blind or disabled (as defined at section 1614 of the Act); with an SUD; with a disabling mental disorder; with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADLs; or with a serious or complex medical condition. Individuals only need to fit within one of these categories to qualify for the medically frail exclusion to the community engagement requirement.

The best reading of the statutory phrase "medically frail or otherwise has special medical needs" is one that considers not only the presence of a particular diagnosis or condition, but also the extent to which the condition impairs an individual's ability to engage in community engagement activities (including but not limited to work) or otherwise comply with the statutory requirements in section 1902(xx) of the Act. Reading the statute to require automatic classification as medically frail or otherwise having special medical needs based solely on diagnosis or condition would risk sweeping in individuals whose conditions do not significantly impair their functional capacity, meaning that they are able to perform 80 hours per month of qualifying activities, and thus would fail to give full meaning to the term "medically frail or who otherwise has special medical needs." The phrase "medically frail or who otherwise has special medical needs" connotes diminished functional capacity that significantly impairs an individual's ability to meet ordinary demands. In this context, the relevant demand is meeting the community engagement requirement. Accordingly, we interpret the statute to require consideration of the severity of an individual's condition

as relevant to whether that individual is capable of meeting the community engagement requirement. An individual who lacks the capacity to meet the community engagement requirement may properly be determined to be medically frail or otherwise to have special medical needs. But, if a person is able to demonstrate community engagement by performing 80 hours per month of qualifying community engagement activities, notwithstanding their physical, mental, or other behavioral health condition, they would not qualify as medically frail and would not be a specified excluded individual.

The statute also expressly delegates definitional authority to the Secretary by providing that individuals who are "medically frail" or "otherwise ha[ve] special medical needs" are those "as defined by the Secretary." This language demonstrates Congress's intent to afford the Secretary discretion to establish standards governing the scope and application of this term in the context of administering the statute. Of note, section 1902(xx)(9)(A)(ii)(V), setting forth the exclusion for individuals who are medically frail or otherwise have special medical needs, is the only item in the statutory list of specified excluded individual categories that includes this express grant of definitional authority, which indicates that Congress specifically intended to authorize the Secretary to place parameters around which individuals will qualify for this exclusion.

Additionally, we are not aligning the definition of the medically frail categories for an individual who is disabled; with a disabling mental disorder; or with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADL, with our definition of a disabled individual at § 435.554(a) or the veteran disability standard we describe in section II.E.4. of this IFC. We do not believe it would be appropriate to apply these definitions to these medically frail exclusion categories as the exclusion at section 1902(xx)(9)(A)(ii)(V)(aa) of the Act is expressly tied to the definition of a disabled individual at section 1614 of the Act, and it would be difficult to set one standard that appropriately defines individuals with disabling mental disorders or with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADLs.

For the first medically frail exclusion, we are specifying at § 435.554(c)(5)(i)(A) that an individual who is blind or disabled (as defined in section 1614 of the Act) and who otherwise meets the

criteria at § 435.554(c)(5)(i) is medically frail, consistent with section 1902(xx)(9)(A)(ii)(V)(aa) of the Act. Under section 1614 of the Act, a person is blind if they have central visual acuity of 20/200 or less in the better eye with use of a correcting lens. Under section 1614 of the Act, a person is disabled if they are unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

For the second medically frail exclusion, we are specifying at § 435.554(c)(5)(i)(B) that an individual with an SUD and who otherwise meets the criteria at § 435.554(c)(5)(i) is medically frail, consistent with section 1902(xx)(9)(A)(ii)(V)(bb) of the Act, excluding individuals who are in stable recovery (which means, in recovery for 5 or more years). As we describe in more detail in the paragraph after next, we are excluding individuals in stable recovery from this definition since their SUDs are unlikely to significantly impair their ability to comply with the community engagement requirement. We decline to further define the term SUD in regulation, with the exception of excluding individuals who are in stable recovery, as there are numerous definitions of an SUD. While we are not further defining the term SUD, except for excluding individuals who are in stable recovery, it is our understanding that the Diagnostic and Statistical Manual of Mental Disorders (DSM–5)⁶¹ and International Classification of Diseases and Related Health Problems, Tenth Revision (ICD–10)⁶² are most commonly used to define and classify SUDs, and States may find the DSM–5 and ICD–10 to be useful resources for setting criteria to identify individuals with SUDs. We also believe it would be reasonable for States to consider certain conditions as SUDs, including alcohol use disorder, opioid use disorder, and stimulant use disorder provided an individual's SUD significantly impairs their ability to comply with the community engagement requirement. We note that this is a list of examples, and not an exhaustive list.

⁶¹ “Diagnostic and Statistical Manual of Mental Disorders (DSM–5–TR),” American Psychiatric Association, accessed February 27, 2026, <https://www.psychiatry.org/psychiatrists/practice/dsm>.

⁶² “International Statistical Classification of Diseases and Related Health Problems 10th Revision,” World Health Organization, accessed February 27, 2026, <https://icd.who.int/browse10/2019/en>.

SUDs are characterized by cognitive, behavioral, and physiological symptoms indicating that an individual continues using a substance (for example, alcohol, opioids, hallucinogens, etc.) despite significant substance-related problems that impact the individual's life.⁶³ In addition, SUDs have different clinical levels: mild, moderate, and severe. It is our understanding that under current clinical standards SUDs are chronic diseases and that individuals in recovery are considered to have an SUD.⁶⁴ However, there are stages of recovery that are generally based on the length of recovery: early recovery, sustained recovery, and stable recovery. Generally, individuals in early recovery have been in recovery for less than 12 months, individuals in sustained recovery have been in recovery for 1 to less than 5 years, and individuals in stable recovery have been in recovery for 5 years or longer.⁶⁵

We interpret the statutory reference to this medically frail category to apply to individuals with an SUD regardless of whether they are in an active treatment program. We believe our interpretation is supported by the statute, which does not include language limiting this exclusion only to individuals in an active treatment program. We also interpret the statutory reference to individuals with an SUD to include individuals who are in recovery from an SUD, including individuals who are in early or sustained recovery. However, we believe that it is inappropriate to include individuals with an SUD who are in stable recovery (which means individuals who are in recovery for 5 or more years) in the medically frail exclusion. The risk of SUD recurrence for an individual in stable recovery is approximately the same as the general population.⁶⁶ Therefore, we believe that such individuals are better able to participate in community engagement activities than an individual who is in active treatment or early or sustained recovery. In addition, we believe that participating in community engagement activities, such as employment, has the

⁶³ “Treatment of Substance Use Disorders,” Centers for Disease Control and Prevention, last modified April 25, 2024, <https://www.cdc.gov/overdose-prevention/treatment/>.

⁶⁴ “Treatment and Recovery,” National Institute on Drug Abuse, last modified July 2020, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>.

⁶⁵ Frone MR, Chosewood LC, Osborne JC, and Howard JJ. (2022). “Workplace Supported Recovery from Substance Use Disorders: Defining the Construct, Developing a Model, and Proposing an Agenda for Future Research.” *Occupational Health Science* 6(4): 475–511. <https://doi.org/10.1007/s41542-022-00123-x>.

⁶⁶ Ibid.

potential to help these individuals maintain their recovery by helping them escape isolation and dependency, build confidence, achieve self-sufficiency and prosperity, and improve health. As noted in section II.E.5.a. and preceding paragraphs in this section of this IFC, section 1902(xx)(9)(A)(ii)(V) of the Act provides the Secretary with the authority to define an individual who is medically frail, so we believe it is consistent with our statutory authority to exclude individuals who are in stable recovery from the definition of an individual with an SUD as we are defining the term. States must ensure that they have reasonable processes and criteria in place for individuals to identify themselves as meeting the SUD medically frail exclusion, including for individuals who have a relapse.

We note that for community engagement purposes the medically frail exclusion for individuals with an SUD is a distinct exclusion from the exclusion at section 1902(xx)(9)(A)(ii)(VII) of the Act for individuals participating in a drug addiction or alcoholic treatment and rehabilitation program (as defined in section 3(h) of the Food and Nutrition Act of 2008), described further in section II.E.7. of this IFC. While we acknowledge that individuals participating in a drug addiction or alcoholic treatment and rehabilitation program generally have SUDs, as we stated in the previous paragraph, we interpret the medically frail exclusion for individuals with SUDs at section 1902(xx)(9)(A)(ii)(V)(bb) of the Act as not limited to individuals in an active treatment program.

For the third medically frail exclusion, we are specifying in our regulation at § 435.554(c)(5)(i)(C) that an individual with a disabling mental disorder and who otherwise meets the criteria at § 435.554(c)(5)(i) is medically frail, consistent with section 1902(xx)(9)(A)(ii)(V)(cc) of the Act. There are numerous definitions of disabling mental disorders. The American Psychiatric Association defines mental disorders as conditions that impact an individual's thinking, emotion, or behavior and may impact an individual's functioning.⁶⁷ Further, a disabling mental disorder may significantly impair an individual's ability to complete major life activities, such as their ability to work or

⁶⁷ “What is Mental Illness?,” American Psychiatric Association, last modified July 2025, <https://www.psychiatry.org/patients-families/what-is-mental-illness>.

volunteer⁶⁸ and can be either permanent or temporary.⁶⁹

The statute specifically requires the mental disorder to be disabling, so an individual with a non-disabling mental disorder would not qualify for this exclusion. We decline to further define disabling mental disorder in our regulation, as it would be incredibly difficult to set one standard that appropriately defines individuals with disabling mental disorders, and we instead direct States to consider whether the disabling mental disorder significantly impairs an individual's ability to comply with the community engagement requirement. However, it is our understanding that the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC), DSM-5, and ICD-10 criteria for serious mental illness (SMIs) are commonly used to define and classify disabling mental disorders, and States may find the ISMICC, DSM-5, and ICD-10 to be useful resources for setting criteria to identify individuals with disabling mental disorders. We also believe it would be reasonable for States to consider certain conditions, when such conditions are disabling and significantly impair an individual's ability to comply with the community engagement requirement, as disabling mental disorders, including schizophrenia, schizotypal disorder, delusional disorder, other non-mood psychotic disorders, moderate or severe bipolar disorder, major depressive disorder, and panic disorder. We note that this is a list of examples, not an exhaustive list.

For the fourth medically frail exclusion, we are specifying in our regulation at § 435.554(c)(5)(i)(D) that an individual with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADLs and who otherwise meets the criteria at § 435.554(c)(5)(i) is medically frail, consistent with section 1902(xx)(9)(A)(ii)(V)(dd) of the Act. There are numerous definitions of a physical, intellectual, or developmental disability. Processes used to determine that an individual has a physical, intellectual, or developmental disability are also generally dependent on an individual's functional status and the severity of their condition, which is consistent with our criteria at § 435.554(c)(5)(i) that an individual's physical, mental, or behavioral health condition must significantly impair their ability to comply with the

community engagement requirement. The Eunice Kennedy Shriver National Institute for Child Health and Human Development has indicated that physical disabilities either temporarily or permanently impact an individual's physical function, intellectual disabilities generally permanent and impact an individual's intellectual functioning and adaptive behavior, and developmental disabilities are generally permanent and can impair physical or intellectual functioning, or both.⁷⁰ ADLs are activities related to personal care including bathing or showering, dressing, getting in and out of bed or a chair, walking, using the toilet, and eating. Instrumental activities of daily living (IADLs) are activities that allow an individual to live independently in the community (for example, shopping, meal preparation, etc.).⁷¹

The statute specifically requires that the individual's physical, intellectual, or developmental disability significantly impair their ability to perform one or more ADLs. An individual with such a disability that does not significantly impair their ability to perform one or more ADLs would not qualify for this exclusion. We interpret the statute as requiring an individual's physical, intellectual, or developmental disability to significantly impair their ability to perform one or more ADLs, but not IADLs, as IADLs are different from ADLs and the statute makes no reference to IADLs. We decline to further define a physical, intellectual, or developmental disability that significantly impairs an individual's ability to perform one or more ADLs in our regulation, as it would be incredibly difficult to set one standard that appropriately defines individuals who would qualify for such an exclusion, and instead direct States to consider the effect of the physical, intellectual, or developmental disability on an individual's ability to comply with the community engagement requirement. We believe it would be reasonable for States to consider certain conditions as physical, intellectual, or developmental disabilities for purposes of this exclusion, when such disabilities significantly impair an individual's ability to perform one or more ADLs and comply with the community

engagement requirement, including muscular dystrophy, cerebral palsy, cystic fibrosis, spina bifida, impairments resulting from injuries (for example, spinal cord injury, brain injury, and amputation), Down syndrome, Fragile X syndrome, and Prader-Willi syndrome. We note that this is a list of examples, not an exhaustive list.

For the final medically frail exclusion, we are specifying at § 435.554(c)(5)(i)(E) that an individual with a serious or complex medical condition who otherwise meets the criteria in § 435.554(c)(5)(i) is medically frail, consistent with section 1902(xx)(9)(A)(ii)(V)(ee) of the Act. Since the statute uses the term "or," we interpret this exclusion as applying to individuals with a serious medical condition, a complex medical condition, or a medical condition that is both serious and complex. We considered including specific conditions within our definition of a serious or complex medical condition, including human immunodeficiency virus and acquired immunodeficiency syndrome (HIV/AIDS), end stage renal disease (ESRD), cancer, and sickle cell disease (SCD) but, for reasons stated in a later paragraph, we do not believe it is reasonable to categorically consider conditions as serious or complex without factoring in criteria such as the severity of the condition.

In 1999, the Institute of Medicine,⁷² in response to a request from the Health Care Financing Administration (now CMS), authored the report "Definition of Serious and Complex Medical Conditions."⁷³ The report detailed difficulties with defining patient populations with "serious and complex" medical conditions but included the following criteria that could be used to describe medical conditions as serious and complex: "conditions that are life threatening, conditions that cause serious disability without necessarily being life threatening, conditions that cause significant pain or discomfort that can cause serious interruptions to life activities, conditions that require major commitments of time and effort from caregivers for a substantial period of time, conditions that may require frequent monitoring, conditions that predict or are associated with severe

⁷⁰ "About Intellectual and Developmental Disabilities (IDDs)," Eunice Kennedy Shriver National Institute of Child Health and Human Development, last modified November 9, 2021, <https://www.nichd.nih.gov/health/topics/idds/conditioninfo>.

⁷¹ "CMS Waiver Applications," Centers for Medicare & Medicaid Services, last accessed February 27, 2026, <https://wms-mmml.cms.gov/WMS/faces/portal.jsp>.

⁷² The Institute of Medicine is now known as the National Academy of Medicine.

⁷³ CMS notes that the term used in this report is different from the "serious or complex" medical condition used in the community engagement statute but has determined the framework in the report to be sufficiently broad to implement this medical frailty exclusion.

⁶⁸ Ibid.

⁶⁹ Ibid.

consequences, conditions associated with negative consequences for someone else, conditions that affect multiple organ systems, conditions that require management to tight physiological parameters, conditions whose management requires coordination of multiple specialties, conditions whose treatment carries a risk of serious complications, and conditions requiring adjustment in a nonmedical environment.⁷⁴

As the Institute of Medicine's report states: "It is important to recognize that these conditions may be serious and complex for some patients at some points during the course of their disease or disability. The conditions will not necessarily be serious and complex for all patients at all times." This approach is relevant to our criteria at § 435.554(c)(5)(i), as an individual with a serious or complex condition must have their ability to comply with the community engagement requirement significantly impaired by their condition to be determined medically frail. We understand that, as discussed in the Institute of Medicine's report, the acuity of patients with serious or complex medical conditions can, and does, improve. An individual with a well-managed serious or complex medical condition that does not significantly impair their ability to meet the community engagement requirement should not be determined medically frail. We therefore expect States to evaluate an individual's serious or complex medical condition according to the serious or complex medical condition's impact on the individual's ability to comply with the community engagement requirement.

Based on the Institute of Medicine's list of possible criteria that could be used to identify a "serious and complex medical condition," we are specifying at § 435.554(c)(5)(i)(E) that a serious or complex medical condition is a medical condition that is life threatening, seriously disabling without necessarily being life threatening, causing significant pain or discomfort that can cause serious interruptions to life activities, requiring a major time or effort commitment from caregivers for a substantial period of time, requiring frequent monitoring, associated with severe consequences or negative consequences for someone else, affecting multiple organ systems,

requiring management to tight physiological parameters, requiring coordination of multiple specialties, requiring treatment that carries a risk of serious complications, or requiring adjustment in non-medical environments. States will need to ensure fidelity to the definition at § 435.554(c)(5)(i)(E) and our criteria at § 435.554(c)(5)(i) that an individual's physical, mental, or other behavioral health condition significantly impair their ability to comply with the community engagement requirement, when determining if an individual has a serious or complex medical condition for purposes of the community engagement exclusion.

We do not believe it would be appropriate to include an exhaustive list of conditions in regulation. However, we believe it would be reasonable for States to consider certain conditions as serious or complex, when such conditions significantly impair an individual's ability to comply with the community engagement requirement, including cancer, ESRD, viral hepatitis, SCD, chronic obstructive pulmonary disease, HIV/AIDS, sarcoidosis, cognitive impairment, heart disease, amyotrophic lateral sclerosis, Parkinson's disease, Huntington's disease, cystic fibrosis, multiple sclerosis, spinocerebellar ataxias, muscular dystrophy, hemophilia, trauma disorders, and Thalassemia major. Examples of conditions that we would not typically expect to significantly impair an individual's ability to meet the community engagement requirement include asthma, hypertension, anemia, generalized pain, pre-diabetes, Type I or II diabetes, obesity, psoriasis, headaches, and Attention-Deficit/Hyperactivity Disorder.

We note that these are not exhaustive lists. As previously stated, according to the Institute of Medicine's report, "It is important to recognize that these conditions may be serious and complex for some patients at some points during their disease or disability. The conditions will not necessarily be serious and complex for all patients at all times."⁷⁵ We further note that, in line with our approach to defining an individual who is medically frail at § 435.554(c)(5)(i), as discussed in a preceding paragraph, we do not believe that it is reasonable for States to categorically exclude individuals with certain serious or complex medical conditions from the community engagement requirement without considering whether their condition

significantly impairs their ability to comply with the community engagement requirement. Whether a person with a serious or complex medical condition qualifies as a specified excluded individual on the basis of medical frailty will depend on the condition significantly impairing their ability to comply with the community engagement requirement. For example, individuals with HIV/AIDS are medically frail if they are determined to have a serious or complex medical condition that significantly impairs the individual's ability to comply with the community engagement requirement, which is less likely to be the case if the acuity of their condition is not severe. We recognize that the acuity may change over time. For example, individuals with pressure ulcers, pneumonia, or fractures that heal would likely be able to comply with the community engagement requirement in relatively short order as their condition would likely no longer be determined as a serious or complex medical condition that significantly impairs their ability to do so. In addition, we believe that if individuals with a serious or complex medical condition do not have significantly impaired ability to comply with the community engagement requirement participating in community engagement activities, such as employment, could potentially help them escape isolation and dependency, build confidence, achieve self-sufficiency and prosperity, and improve health.

Except as discussed in the preceding paragraphs, we decline to further define in regulation an individual with an SUD; with a disabling mental disorder; with a physical, intellectual or developmental disability that significantly impairs their ability to perform one or more ADLs; or with a serious or complex medical condition. As we specify at § 435.554(c)(5)(ii), States must use lists of diseases, diagnoses, disorders, or other health conditions to help define these categories and identify individuals who might potentially qualify as medically frail if they also meet the standard in § 435.554(c)(5)(i). The lists must be auditable, justifiable, and consistent with the definitions established at § 435.554(c)(5)(i)(A) through (E). We anticipate these lists will generally take the form of health care code sets (for example, ICD-10 codes, etc.). Further, such lists must be revised on a regular basis to add or remove diseases, diagnoses, disorders, or health conditions (as applicable) based on States' implementation experiences. For

⁷⁴ Chrvla CA, Sharfstein SS, Institute of Medicine (U.S.). Committee On Serious and Complex Medical Conditions, and Inc Netlibrary. 1999. Definition of Serious and Complex Medical Conditions. Washington, DC: National Academy Press. <https://www.ncbi.nlm.nih.gov/books/NBK224968/>.

⁷⁵ Ibid, pg. 19.

example, States may determine that health conditions no longer need to be included on their lists because of advancements in treatment or that health conditions need to be added that are rare and were missed during their initial implementation of the community engagement requirement. In addition, if an individual does not have a disease, diagnosis, disorder, or health condition on the State's list, the State must have reasonable processes and criteria in place for such individuals to request consideration for the medically frail exclusion. We expect that individuals will request consideration on an infrequent basis as we believe such lists are likely to capture the breadth of diseases, diagnoses, disorders, or other health conditions that could be reasonably considered to meet the definitions at § 435.554(c)(5)(i)(A) through (E).

We note that any lists of diseases, diagnoses, disorders, or health conditions or other processes that States use to identify medically frail individuals must be shared with us upon request as part of our oversight and data monitoring activities. If through Payment Error Rate Measurement Program (PERM) audits and reporting, or any other CMS audits, we determine that States determined that an individual is medically frail in a manner inconsistent with § 435.554(c)(5)(i) (meaning there is frequent approval of individuals as medically frail with little to no support for the conclusion that their physical, mental, or other behavioral health condition significantly impairs their ability to comply with the community engagement requirement), States would not be in compliance with the regulation. Over time and with advances in treatment, we expect that the number of individuals who are determined to be medically frail by States will decline and then stabilize.

As States develop their lists and implement the medically frail exclusion, they must ensure that they are conducting outreach consistent with the Medicaid outreach requirements at § 435.561. We also encourage States to consider general public outreach efforts to complement the outreach required at § 435.561, so the public can clearly understand in which circumstances individuals might qualify as medically frail. In particular, individuals who are medically frail might not realize that they qualify for an exclusion from the community engagement requirement and will need clear, consumer-friendly information to help them understand if they are excluded. Additional information on Medicaid outreach

requirements is found in section II.L. of this IFC.

6. Individuals Compliant With TANF Work Requirements and Individuals Not Exempt From SNAP Work Requirements

Section 1902(xx)(9)(A)(ii)(VI) of the Act creates an exclusion that references existing work requirements in other jointly administered Federal-State programs. Specifically, clause (ii)(VI)(aa) references the TANF block grants, and clause (ii)(VI)(bb) references SNAP. While the TANF⁷⁶ and SNAP⁷⁷ statutes both use the terminology “work requirements,” the term is inclusive of work and activities other than work, such as education, job training, community service, volunteering, etc.

Section 1902(xx)(9)(A)(ii)(VI)(aa) of the Act excludes individuals who are “in compliance with any requirements imposed by the State under section 407 of the Act” from having to meet the Medicaid community engagement requirement. Section 407 of the Act establishes mandatory work requirements and performance standards for the TANF program. Unlike other work requirements that apply to individuals, these Federal requirements establish performance standards that States must achieve; States have flexibility in how they implement work requirements placed on individuals to meet the performance standards outlined in section 407 of the Act.⁷⁸ We adopt the language of section 1902(xx)(9)(A)(ii)(VI)(aa) of the Act in new regulation at § 435.554(c)(6). Because States may define compliance with TANF work requirements differently, we are not prescribing a uniform definition of compliance with TANF work requirements for the purposes of this exclusion. Instead, when determining whether an individual is eligible for the TANF exclusion from the Medicaid community engagement requirement, the State Medicaid agency should assess whether the individual is compliant with the specific TANF work requirements established by the State. Consistent with section II.I.7.f. of this IFC, State Medicaid agencies should work closely with the State agency that administers TANF to determine which individuals are eligible for this TANF-based exclusion. To implement this exclusion, States should not rely on or

require reporting from the individual. We also note that most potentially applicable individuals who receive TANF will fall under other exclusions, such as those for parent, guardian, or caretaker relative of a child age 13 or younger, described at 435.554(c)(3).

Section 1902(xx)(9)(A)(ii)(VI)(bb) of the Act, implemented at new § 435.554(c)(7), creates an exclusion for an individual who “is a member of a household that receives [SNAP] benefits . . . and is not exempt from a work requirement under the Food and Nutrition Act of 2008.” Based on the plain language of the statute, we interpret the use of “not exempt from” in this provision to mean “subject to” a work requirement under the Food and Nutrition Act of 2008. If an individual is in a household that receives SNAP benefits and is subject to a work requirement under the SNAP program, they meet the definition of a specified excluded individual and are therefore not an applicable individual subject to the Medicaid community engagement requirement.

Unlike the TANF exclusion from community engagement, which requires the State to ensure the individual is compliant with TANF work requirements to meet the definition for the exclusion, for the SNAP exclusion, States only need to determine that the individual is not exempt from SNAP work requirements and is in a household that receives SNAP benefits; the State does not need to confirm that the individual is in fact compliant with SNAP work requirements. CMS is aware that SNAP has two types of work requirements: general work requirements, defined in section (6)(d)(1) of the Food and Nutrition Act of 2008, and the time limit work requirement, defined in section (6)(o) of such Act. Because section 1902(xx) of the Act does not specify which SNAP work requirements apply to this exclusion, we interpret the statute to mean that both requirements apply. Therefore, an individual would be considered a specified excluded individual if they were a member of a household receiving SNAP benefits, and were not exempt from the general work requirement, time limit work requirement, or both—meaning they were subject to at least one of the SNAP work requirements. Consistent with section II.I.7.f. of this IFC, State Medicaid agencies should work closely with the State agency that administers SNAP to determine which individuals are eligible for this exclusion.

Both TANF and SNAP have long-standing work requirements for adults, with some exceptions, as a condition of

⁷⁶ Section 407 of the Social Security Act.

⁷⁷ Sections 6(d)(1) and 6(o) of the Food and Nutrition Act of 2008.

⁷⁸ Falk G. (2026). “Temporary Assistance for Needy Families (TANF) Block Grant: A Primer.” U.S. Library of Congress. Congressional Research Service, R48413. <https://www.congress.gov/crs-product/R48413>.

receiving benefits. Using national data from 2019, the Office of the Assistant Secretary for Planning and Evaluation in HHS, estimated that approximately 40 percent of Medicaid beneficiaries nationally were also enrolled in SNAP, and 4 percent were also enrolled in TANF.⁷⁹ This exclusion ensures that Medicaid beneficiaries do not need to also meet the Medicaid community engagement requirement if they are already subject to SNAP and/or meeting TANF requirements. Because of the population overlap between these programs, this exclusion can reduce the burden on beneficiaries who may be eligible for and receiving benefits from multiple programs and allows States to use information regarding an individual from these programs to verify their exclusion or need to demonstrate Medicaid community engagement.

7. Participant in a Drug or Alcohol Rehabilitation or Treatment Program

Section 1902(xx)(9)(A)(ii)(VII) of the Act establishes an exclusion for individuals “participating in a drug addiction or alcoholic treatment and rehabilitation program (as defined in section 3(h) of the Food and Nutrition Act of 2008).” Section 3(h) of such Act defines “drug addiction or alcoholic treatment and rehabilitation program” to mean any such program conducted by a private non-profit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act to provide treatment that can lead to the rehabilitation of drug addicts or alcoholics. States will need to determine which rehabilitation and treatment programs meet this definition for purposes of this exclusion. To qualify for this exclusion, the statute requires an individual to “participate” in a rehabilitation or treatment program. We are not establishing a minimum time commitment requirement, such as a minimum number of hours or days of services, that would qualify as participation for this exclusion; instead, States may establish a minimum standard for participation for such purposes, consistent with appropriate clinical guidelines. We implement this definition of “participating in a drug addiction or alcoholic treatment and rehabilitation program” for the community engagement exclusion at the new § 435.554(c)(8).

⁷⁹ Macartney S and Gherter R. (2023). “How Many People that Receive One Safety Net Benefit Also Receive Others?” Office of Human Services Policy, Assistant Secretary for Planning and Evaluation. <https://aspe.hhs.gov/sites/default/files/documents/340f9d2586fcb3cdc1510f793403d0c/program-overlap-datapoint.pdf>.

We acknowledge that individuals participating in an addiction treatment or rehabilitation program will, by definition, have an SUD. The statutory definition of medical frailty at section 1902(xx)(9)(A)(ii)(V) of the Act (discussed in more detail in section II.E.5. of this IFC) includes individuals with an SUD. Additionally, States must ensure that any data sharing used to implement both SUD-related exclusions is aligned with 42 CFR part 2, the Federal regulation protecting the confidentiality of SUD treatment records. This is addressed in more detail in section II.I.7.e. of this IFC.

8. Inmate of a Public Institution

Section 1902(xx)(9)(A)(ii)(VIII) of the Act provides an exclusion from the community engagement requirement for individuals who are inmates of a public institution. Medicaid has a long-standing definition of “inmate of a public institution” at § 435.1010, which we reference in new § 435.554(c)(9). We consider an individual to be an inmate of a public institution if the individual is in custody and held involuntarily through operation of law enforcement.⁸⁰ Public institutions do not include educational or vocational training institutions; child care institutions; or medical institutions, including institutions for mental diseases (IMDs). Inmates of public institutions include individuals in correctional institutions such as State or Federal prisons, local jails, detention facilities, or other penal settings. Recent legislative changes⁸¹ and CMS guidance have required or provided flexibility to States to provide certain Medicaid-covered services to eligible individuals during periods of incarceration. Because States are required to suspend rather than terminate eligibility during periods of incarceration,⁸² States should have systems and processes already in place to identify this population, including an individual’s date of release. We believe that applying the existing Medicaid

⁸⁰ CMCS SHO letter #16–007, “To Facilitate Successful Re-entry for Individuals Transitioning from Incarceration to their Communities.” (April 28, 2016). Available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>.

⁸¹ Including, but not limited to, section 1001 of the SUPPORT Act (Pub. L. 115–271), Section 5121 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), and Section 205 of the Consolidated Appropriations Act, 2024 (Pub. L. 118–24). These legislative changes established, and then further amended section 1902(a)(84) of the Act.

⁸² CMCS Informational Bulletin, “Prohibition on Termination of Enrollment Due to Incarceration (Division G, Title I, Section 205, of the Consolidated Appropriations Act, 2024).” (December 23, 2025). Available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib122325.pdf>.

definitions to this exclusion ensures consistency and will promote administrative efficiency, as States will be able to use information from existing eligibility and data systems when effectuating this exclusion. We adopt the existing definition of “inmate of a public institution” at § 435.1010 for the community engagement exclusion at the new § 435.554(c)(9).

9. Pregnant or Entitled to Postpartum Coverage

Section 1902(xx)(9)(A)(ii)(IX) of the Act establishes an exclusion for pregnant and postpartum women who are entitled to medical assistance under section 1902(e)(5) or (16) of the Act. While pregnant women are generally not eligible for the adult group under § 435.119, and so most often would not be subject to community engagement, we also recognize that individuals enrolled in the adult group can become pregnant and remain in the adult group.⁸³ Also, it is possible that a section 1115(a)(2) demonstration population determined to include applicable individuals may have pregnant women enrolled in it. Therefore, it is important to specify that a pregnant woman is a specified excluded individual.

Section 1902(e)(5) of the Act, implemented at § 435.170, establishes mandatory State plan continuous eligibility during pregnancy and through the end of the month in which the 60-day postpartum period following the end of pregnancy concludes, regardless of a change in income. Section 1902(e)(16) of the Act provides the State option, effective beginning April 1, 2022, for continuous and extended coverage for women during pregnancy and for 12 months after the end of the pregnancy.⁸⁴ As of May 2026, 48 States, the District of Columbia, and U.S. Virgin Islands have elected the option to provide 12-month extended postpartum coverage in Medicaid (and CHIP). This State plan option means that a pregnant woman enrolled in Medicaid is continuously eligible for 12 months after the end of pregnancy,

⁸³ The Office of the Assistant Secretary for Planning and Evaluation found that, in 2018, 8.2% of enrollees with Medicaid/CHIP financed births were enrolled in the adult group. Gordon SH, Whitman A, Buchmueller T, et al., “Medicaid Eligibility Category Among Enrollees with Medicaid-Paid Births in 2018,” Health Services Research 61(1) (2026): e70053, <https://doi.org/10.1111/1475-6773.70053>.

⁸⁴ For more information, see CMCS SHO Letter #21–007, “Improving Maternal Health and Extending Postpartum Coverage in Medicaid and the Children’s Health Insurance Program (CHIP).” (December 7, 2021). Available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho21007.pdf>.

regardless of the eligibility group in which she is enrolled. As a result, any woman who is receiving Medicaid under either the mandatory postpartum period (§ 435.170) or the 12-month postpartum extension while in the State plan adult group or a relevant section 1115(a)(2) demonstration population is a specified excluded individual during the relevant postpartum period. We implement this definition at the new § 435.554(c)(10).

F. Mandatory Exceptions vs. Specified Excluded Individuals

In describing individuals who are not required to meet the community engagement requirement at section 1902(xx)(2), section 1902(xx)(3)(A) of the Act establishes the term “mandatory exceptions for certain individuals” and section 1902(xx)(9)(A)(ii) of the Act establishes the term “specified excluded individual.” The difference between these terms stems from the definition of “applicable individual” at section 1902(xx)(9)(A)(i) of the Act, which defines applicable individual as individuals “other than specified excluded individuals (as defined in clause (ii)).” As discussed in section II.B. of this IFC, section 1902(xx)(1) of the Act establishes community engagement as a condition of eligibility for “applicable individuals,” and section 1902(xx)(9)(A)(i) of the Act expressly excludes “specified excluded individuals” from the definition of “applicable individuals.” Therefore, community engagement is not a condition of eligibility for specified excluded individuals. Conversely, the mandatory exceptions described at section 1902(xx)(3)(A) of the Act apply to “applicable individuals” who are otherwise subject to the community engagement requirement in a given month, but who meet criteria for a mandatory exception for part or all of that month, which results in the State deeming them compliant. Therefore, individuals who meet the criteria for a mandatory exception are still, by definition, considered applicable individuals, while specified excluded individuals are not.

This distinction becomes important when determining whether someone is subject to the community engagement requirement. The threshold question for States when they begin to process an application or a renewal is whether someone is an applicable individual or a specified excluded individual. If the State determines that the individual is a specified excluded individual in the month of application or when the State processes the renewal, it must not determine whether the individual met

the community engagement requirement or met criteria for one of the mandatory exceptions in the prior month(s), as required at § 435.556(c); accordingly, States are prohibited from requiring specified excluded individuals to demonstrate community engagement or be deemed to have demonstrated community engagement as a condition of eligibility. If the individual is an applicable individual in the month of application or when the State processes the renewal, the State would need to continue to analyze whether the individual meets criteria for any of the mandatory exceptions and deem compliance, or, if they are not excepted, determine whether the individual is compliant with the community engagement requirement during the appropriate timeframe. We further describe how States assess compliance, including when they determine if someone is a specified excluded individual or applicable individual, in section II.H. of this IFC.

We explain the distinction between mandatory exceptions and specified excluded individuals because of the reference to “specified excluded individuals” in the list of mandatory exceptions at section 1902(xx)(3)(A)(i)(I) of the Act. A State that is assessing compliance in a review period, as defined in section II.H.3. of this IFC, must have first determined that the individual is not a specified excluded individual. However, a State may find that this individual, although no longer a specified excluded individual, previously was a specified excluded individual in part or all of 1 or more months during the review period. If so, the individual would meet the criteria for the mandatory exception in those months.

For example, for a renewal that is due in September, a State that requires individuals to demonstrate community engagement in 2 months considers whether an individual met any of the mandatory exception criteria during the review period of April through September (the individual’s 6-month eligibility period in this example). For part of this review period, the State’s records show that the individual met the exclusion criteria as a parent of a dependent child 13 years of age or under. However, their child (who does not have a disability) turned 14 years old in June. Thus, at the time of the renewal due in September, the parent is no longer a specified excluded individual but is now an applicable individual subject to the community engagement requirement. In this scenario, the parent would be “deemed” to demonstrate community engagement

in 3 of the 6 months in the review period (April, May, and June), because the individual met the exclusion criteria as a parent of a dependent child who was under age 14 for part or all of those months; this meets the State’s requirement for the individual to be compliant for 2 months since their last renewal.

As previously discussed, community engagement is not a condition of eligibility for specified excluded individuals, so such individuals are not subject to the community engagement requirement. Conversely, compliance with the community engagement requirement is a condition of eligibility for applicable individuals. Applicable individuals who meet a mandatory exception are subject to the community engagement requirement, but they are deemed to demonstrate community engagement for any month the exception applies during the review period.

G. Short-Term Hardship Exceptions

States have the option under section 1902(xx)(3)(B) of the Act to include in their State plans a “short-term hardship” exception to the community engagement requirement for applicable individuals. States electing this option must, under procedures established by the State, in accordance with standards specified by the Secretary, deem applicable individuals to have demonstrated community engagement during a month in which they meet the criteria for one of the circumstances described in the statute’s definition of a “short-term hardship event.” A “short-term hardship event” exists under section 1902(xx)(3)(B) of the Act when the criteria for any of the following circumstances are met for all or part of a month:

- As described in section 1902(xx)(3)(B)(ii)(I) of the Act, an applicable individual receives inpatient hospital services, nursing facility services, services in an intermediate care facility for individuals with intellectual disabilities (ICF/IID), inpatient psychiatric hospital services, or such other services of similar acuity (including outpatient care relating to the preceding institutional services) as the Secretary determines appropriate;
- An applicable individual resides in a county (or equivalent unit of local government) in which, as described in section 1902(xx)(3)(B)(ii)(II)(aa) of the Act, there exists an emergency or disaster declared by the President under the National Emergencies Act (NEA) or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act); or, as described in section

1902(xx)(3)(B)(ii)(II)(bb) of the Act, the unemployment rate is at or above the lesser of 8 percent or 1.5 times the national unemployment rate; or

- As described in section 1902(xx)(3)(B)(ii)(III) of the Act, an applicable individual, or the dependent of the applicable individual, must travel outside of their community for an extended period of time to receive medical services necessary to treat a serious or complex medical condition (as described in section 1902(xx)(9)(A)(ii)(V)(ee) of the Act) that are not available within their community of residence.

For the circumstance described in section 1902(xx)(3)(B)(ii)(II)(bb) of the Act (relating to an area with a particular unemployment rate percentage), the State must make a request to the Secretary, in such form, at such time, and containing such information as the Secretary may require, for the short-term hardship to be available. Under section 1902(xx)(3)(B)(i) of the Act, the applicable individual must request of the State a short-term hardship exception for the circumstances described in section 1902(xx)(3)(B)(ii)(I) or (III) of the Act (relating, respectively, to the receipt of certain institutional services or services of similar acuity or where the individual or individual's dependent must travel outside their community for necessary medical treatment for an extended period of time).

We are implementing this State option at new § 435.555.

1. Scope of the Election and Certain Notice Requirements

While the short-term hardship exception in section 1902(xx)(3)(B) of the Act is optional for States, the statute does not offer States an option to select one or only some of the circumstances described in section 1902(xx)(3)(B)(ii) of the Act to be the exclusive basis for granting a short-term hardship exception. For example, a State may not limit the short-term hardship exception only to individuals who reside in a county (or equivalent unit of local government) in which there exists an emergency or disaster declared by the President under the NEA or the Stafford Act. We therefore specify at § 435.555(a) that States electing the short-term hardship exception must deem an applicable individual to have demonstrated community engagement when the individual experiences *any one of the* short-term hardship events described in section 1902(xx)(3)(B)(ii) of the Act and implemented at new § 435.555(d). (We note, however, that certain short-term hardship events

include in their criteria a State request to effectuate them, as described below.)

States that elect the short-term hardship option must confirm that they are doing so in their State plans. We expect that States will be able to make the election in the initial material, currently under development, that they will be required to submit to CMS confirming their compliance with section 1902(xx) of the Act. If a State does not initially elect the short-term hardship option, it may do so through a State plan amendment at a later time. A State that elects the short-term hardship option will be permitted to deselect the option through a State plan amendment.

New § 435.561(b)(3)(ii) and (iii) require the State to conduct outreach as implemented at new § 435.561 whenever a State: (a) elects the short-term hardship exception in its State plan under § 435.555(a); and (b) on each occasion in which a short-term hardship exception relating to an event described in § 435.555(d)(2) (for NEA-declared or Stafford Act-declared emergencies or disaster) becomes available to applicable individuals, or the State effectuates the short-term hardship event described in § 435.555(d)(3) (relating to a county or equivalent unit of local government having an unemployment rate at or above a certain level). It is possible that a State, upon electing the short-term hardship exception through a State plan amendment, will simultaneously submit a request to CMS to effectuate the short-term hardship circumstance relating to a county or other locality experiencing a certain level of unemployment (the procedure for this request is described below and would be separate from the State plan amendment). The State's request to CMS to effectuate the unemployment-related short-term hardship circumstance would not be a component of the State plan amendment, and it would necessarily be approved by CMS after approval of the State plan amendment proposing to elect the short-term hardship exception, although the approval of the former may closely follow in time the approval of the latter. The State would still be required to conduct outreach upon both occasions, consistent with § 435.561(b)(3)(ii) and (iii).

We consider both deselection of the short-term hardship exception option from a State plan and the expiration of a short-term hardship event to be an "action" under § 431.201, because the former reduces eligibility by removing the availability of an exception from the State plan while the latter ends the availability of an exception currently in

use. Therefore, whenever a State deselects the short-term hardship option from the State plan or upon an anticipated expiration of a short-term hardship event, the State must provide all impacted beneficiaries with a minimum of 10 days advance notice with fair hearing rights consistent with §§ 435.917 through 435.918 and 42 CFR part 431 subpart E. Consistent with new § 435.561(b)(3)(iv)(A) and (B), the advance notice in these circumstances must include the outreach content in new § 435.561(c).

2. Procedures for Implementing Short-Term Hardship Exceptions

Section 1902(xx)(3)(B)(i) of the Act directs that State determinations of short-term hardship be made "under procedures established by the State (in accordance with standards specified by the Secretary)." This language is nearly identical to the "undue hardship" language in section 1917(b)(3)(A) of the Act (relating to the estate-recovery rules), section 1917(c)(2)(D) of the Act (relating to the asset-transfer rules), and section 1917(d)(5) of the Act (relating to the trust rules).⁸⁵ We consider our policies implementing these other provisions of the Act to provide a familiar model for implementing the short-term hardship procedures for community engagement.

For the procedures relating to the estate recovery undue hardship provision, we have instructed States as follows: "These procedures must, at a minimum, provide for advance notice of any proposed recovery. They must also specify the method for applying for a[n] [undue hardship] waiver, the hearing and appeal rights, and the time frames involved." CMS State Medicaid Manual, Section 3810(D).

For the procedures relating to the asset transfer and trust undue hardship provisions, CMS has historically

⁸⁵ Section 1917(b)(3)(A) of the Act reads: "The State shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection . . . if such application would work an undue hardship as determined on the basis of criteria established by the Secretary." Section 1917(c)(2) of the Act reads: "An individual shall not be ineligible for medical assistance by reason of [the asset transfer rules] to the extent that—(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary) that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary." Section 1917(d)(5) of the Act reads: "The State shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection for an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary."

instructed States as follows: “[Y]our undue hardship provision must, at a minimum, provide for: Notice to recipients that an undue hardship exception exists; A timely process for determining whether an undue hardship waiver will be granted; [and] A process under which an adverse determination can be appealed.” CMS State Medicaid Manual, Section 3258.10(C)(5) and 3259.8(C).^{86 87}

Sections 1917(b)(3)(A), (c)(2)(D), and (d)(5) of the Act are mandatory, and CMS established the policies implementing them in 1994.⁸⁸ We expect that States are experienced in applying hardship-related exceptions consistent with these standards. Thus, given the similarities in the statutory language, and the authority in section 1902(xx)(3)(B)(i) of the Act for the Secretary to specify the procedural standards for the short-term hardship exception, we are generally adopting in regulation for the short-term hardship exception the policies that apply under the undue hardship provisions, except for one difference discussed below.

One significant difference between the evaluation of *undue* hardship in the various provisions described in section 1917 of the Act and *short-term* hardship under section 1902(xx)(3)(B) of the Act is that, in the latter circumstance, the hardship will generally have an end date. For example, a short-term hardship exception for an inpatient hospital stay (which is a short-term hardship circumstance under section 1902(xx)(3)(B)(ii)(I) of the Act) will generally last through the end of the month in which the inpatient hospitalization of an applicable individual ends (as such an applicable individual would be deemed to meet community engagement under section 1902(xx)(3)(B) of the Act if the individual is only hospitalized for a part of a month). By contrast, an individual who, for example, transfers an asset for less than fair market value during the

period described in section 1917(c)(B)(i) of the Act but who establishes undue hardship per section 1917(c)(2)(D) of the Act will not be ineligible (that is, not subject to a “penalty period”) for medical assistance for nursing facility services or other services (as described in section 1917(c)(1)(C) of the Act). The exception to the penalty period will not have a beginning or end date; the penalty will simply not apply to the asset transfer.

Our policies relating to the undue hardship provisions of section 1917 of the Act have not had to account for a fixed duration of the exceptions. For the community engagement requirement, we address this by requiring that States notify applicable individuals of their determination that a short-term hardship exception will or will not apply, and, if determining that it will, the date on which the exception will end. We understand that the actual calendar date may not be known to the State at the time of its determination that the exception will apply. It would be sufficient for a State to advise the applicable individual of the event that would result in the end of the exception. In the example of an applicable individual who requests a short-term hardship exception on the basis of inpatient hospitalization, it would be sufficient for the State to notify the individual, upon informing the individual that the exception will apply, that it will end on the last day of the month in which the applicable individual’s inpatient hospitalization ends. Once the specific date on which the State intends to end the hardship exception for an individual or individuals is known, the State must, as explained above, provide advance notice to the individual(s) consistent with §§ 435.917 through 435.918 and 42 CFR part 431 subpart E.

We thus direct at § 435.555(c) that States electing the short-term hardship exception must provide notice informing applicable individuals that a short-term hardship exception exists and its anticipated end date for circumstances in which an applicable individual need not request an exception. For circumstances in which the applicable individual or an individual acting on their behalf must request an exception, the State must also provide: notice of the method by which an applicable individual (or individual acting on their behalf) may request a short-term hardship exception; notice of the timeframe for requesting the exception; a timely process for determining whether a short-term hardship exception will be granted; notice to an applicable individual of the

State’s determination that a short-term hardship exception will or will not apply, and, if the State determines that the exception will apply, the anticipated end date of the exception; and a process under which an adverse determination can be appealed.

States must comply with the notice requirement, described in § 435.555(c)(1), as part of their conformity with the noncompliance procedures in this rule. Under § 435.558(c)(1)(vii), relating to the mandatory content of a notice of noncompliance with the community engagement requirement, such a notice must include, in States that have adopted the short-term hardship exception, “the information about short-term hardships described in § 435.555(c).” We note that States electing the short-term hardship option will also provide notification of the availability of the exception when they comply with § 435.561 (relating to State outreach requirements for community engagement). Under § 435.561, States must notify individuals of the community engagement requirement, including an explanation of the exceptions to the requirement, when the State provides an individual enrolled in the adult group at § 435.119 or an applicable section 1115 demonstration an eligibility determination notice at application or renewal of eligibility, or when moving into one of these groups based on a change in circumstances. Under § 435.561(c)(1)(i), the outreach notice must include an “explanation of the exceptions to such requirement under § 435.553, including short-term hardship exceptions under § 435.555, if elected by the State[.]” In States that have elected the short-term hardship exception, such notices would therefore necessarily include information on the existence of the short-term hardship exception. Additionally, as explained previously, § 435.561(b)(3)(ii) and (iii) require that States notify applicable individuals when the State elects the short-term hardship exception and when certain short-term hardship circumstances become available or are effectuated.

In circumstances in which an applicable individual must request an exception based on a short-term hardship event (as described in section II.G.4. and II.G.7. of this IFC), States must accept the request from any of the individuals described in § 435.907(a): the applicable individual; an adult in the applicable individual’s household, as defined in § 435.603(f), or family, as defined in section 36B(d)(1) of the Code; an authorized representative of the applicable individual; or, if the

⁸⁶ The CMS State Medicaid Manual is available at <https://www.cms.gov/regulations-and-guidance/guidance/manuals/paper-based-manuals-items/cms021927>.

⁸⁷ We note the very slight difference in the prefatory language to the notice requirements described in Section 3258.10(C)(5) (relating to asset-transfers) and Section 3259.8, in that Section 3258.10(C)(5) instructs that a State’s undue hardship procedure must “provide for and discuss the following administrative requirements.” (Emphasis added.) The notice requirement elements described above, however, are identical, and CMS does not consider the distinction in the prefatory language in these two provisions to be meaningful.

⁸⁸ After CMS established its policy for the undue hardship-related notice, request process, and appeal requirements for asset-transfers, the Deficit Reduction Act of 2005, Public Law 109–171, at section 6011(d)(2), incorporated them into Federal law. See 42 U.S.C. 1396p note.

applicable individual is a minor (in a State in which an individual 19 or older is a minor) or incapacitated, someone acting responsibly on the applicable individual's behalf. Section 435.907(a) requires that States accept from the particular individuals described in that regulation "any documentation required to establish eligibility." As described above, compliance with community engagement is a condition of eligibility, which means that a request for a short-term hardship exception to the community engagement requirement helps an applicable individual establish or maintain Medicaid eligibility. We therefore believe that States must accept requests for short-term hardship exceptions from the individuals described in § 435.907(a), which we specify at § 435.555(b)(2), (c), and (d).

3. Definition of a Short-Term Hardship Event

Section 1902(xx)(3)(B)(ii) of the Act defines a "short-term hardship event" to be, in summary, one of the following circumstances: an applicable individual receives certain institutional (or comparable) services; an applicable individual resides in an area in which an emergency or disaster under certain Federal authorities has been declared or in an area of comparatively high unemployment; or an applicable individual, or the dependent of the applicable individual, must travel outside of their community for an extended period of time for necessary medical care for certain conditions. An applicable individual will be deemed to have met community engagement if the individual meets the criteria for any of these circumstances for all or part of a month. We implement the definition of a short-term hardship event at § 435.555(d). We address each of the circumstances in the following sections.

4. Applicable Individuals in Certain Medical Institutions or Receiving Outpatient Services

The first short-term hardship event is described in section 1902(xx)(3)(B)(ii)(I) of the Act and pertains to applicable individuals who are receiving inpatient hospital services, nursing facility services, services in an ICF/IID, inpatient psychiatric hospital services, or such other services of similar acuity (including outpatient care relating to other services specified in this subclause) as the Secretary determines appropriate.

We note first that an individual who receives any of the services described in section 1902(xx)(3)(B)(ii)(I) of the Act may be a specified excluded individual based on being medically frail or

otherwise having special medical needs under § 435.554(c)(5). For example, an individual who for all or part of a month receives services in an ICF/IID may be medically frail under § 435.554(c)(5)(i)(A) (relating to individuals who are blind or disabled as defined in section 1614 of the Act) or § 435.554(c)(5)(i)(D) (relating to individuals with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADLs) if their physical, mental, or behavioral health condition significantly impair their ability to comply with the community engagement requirement. As we explain in I.L.F. of this IFC, if a State determines that an individual is a specified excluded individual in the month of application or when the State processes the renewal, it must not determine whether the individual meets the community engagement requirement or meets the criteria for a mandatory exception. The same outcomes described in I.L.F. of this IFC would apply in the context of the optional short-term hardship exception; that is, if a State that has elected the short-term hardship exception determines an individual to be a specified excluded individual in the month of application or when the State processes the renewal, it must not determine whether the individual met the community engagement requirement or met the optional short-term hardship exception. We implement this requirement at § 435.555(f).

"Inpatient hospital services" are defined for purposes of Medicaid State plan coverage in section 1905(a)(1) of the Act and § 440.10, and this definition specifically excludes services in an institution for mental diseases (IMD). Similarly, section 1905(a)(4)(A) of the Act and § 440.155 define "nursing facility services" for purposes of Medicaid State plan coverage and this definition excludes services in an IMD. In addition, services in an ICF/IID are defined for purposes of State plan coverage in section 1905(a)(15) of the Act and § 440.150 and this definition also excludes services in an IMD. IMDs are defined in section 1905(i) of the Act to mean "a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services."

Because section 1905(a) of the Act and our implementing regulations define "inpatient hospital services," "nursing facility services," and "ICF/IID services" States must recognize services

meeting the "inpatient hospital services," "nursing facility services," and "ICF/IID services" definitions at §§ 440.10, 440.155, and 440.150, respectively, for purposes of the short-term hardship exception at section 1902(xx)(3)(B)(ii)(I) of the Act. Applicable individuals who receive "inpatient hospital services" as defined at § 440.10, "nursing facility services" as defined at § 440.155, and "ICF/IID services" as defined at § 440.150 for part or all of a month must be deemed to have met the community engagement requirement for such month if the individual's State has adopted the short-term hardship exception. We have included receipt of "inpatient hospital services" as defined at § 440.10, "nursing facility services" as defined at § 440.155, and "ICF/IID services" as defined at § 440.150 as a short-term hardship event in our regulation at § 435.555(d)(1)(i).

We do not define "inpatient psychiatric hospital services" for all age groups. However, "inpatient psychiatric hospital services under age 21" are defined for purposes of Medicaid State plan coverage in section 1905(a)(16) of the Act and at § 440.160. In the absence of a definition of "inpatient psychiatric hospital services" for individuals of all ages in title XIX of the Act, we believe it is reasonable for States to consider our "inpatient psychiatric hospital services under age 21" definition at § 440.160 in the context of defining "inpatient psychiatric hospital services" for purposes of the short-term hardship exception. However, given that our definition at § 440.160 does not apply to all age groups, we do not believe it would be reasonable for States to solely use that definition in the context of section 1902(xx)(3)(B)(ii)(I) of the Act. It is also our understanding that some States define "inpatient psychiatric hospital services" under State law or follow "inpatient psychiatric hospital services" definitions used in universal coding constructs. In addition, many "inpatient psychiatric hospital services" are not coverable in Medicaid due to the IMD payment exclusion even though it would be reasonable for a State to consider such services as "inpatient psychiatric hospital services." We believe it would be reasonable for States to follow definitions of "inpatient psychiatric hospital services" described in State law or universal coding even for services that are not otherwise coverable under the State plan. For these reasons we are defining "inpatient psychiatric hospital services" at § 435.555(d)(1)(i) as "inpatient psychiatric hospital services including the services defined at

§ 440.160 for individuals under the age of 21 without regard to whether such services are in an institution for mental diseases” for purposes of the short-term hardship exception at section 1902(xx)(3)(B)(ii)(I) of the Act.

As previously noted, section 1902(xx)(3)(B)(ii)(I) of the Act also references “such other services of similar acuity (including outpatient care relating to other services specified in this subclause) as the Secretary determines appropriate.” We are interpreting and implementing this language at § 435.555(d)(1)(ii), as described below.

We recognize that individuals may receive inpatient services that do not meet our benefit definitions for “inpatient hospital services,” “nursing facility services,” “ICF/IID services,” and “inpatient psychiatric hospital services.” Specifically, an individual may receive Medicaid-covered inpatient services in a critical access hospital (CAH) consistent with § 440.170(g) or an emergency hospital consistent with § 440.170(e), respectively, in States that cover such services. Further, an individual may receive inpatient services in an IMD or in other facilities that are not covered under section 1905(a) of the Act as inpatient services. We believe an exception would be warranted for an individual receiving inpatient services furnished in a CAH consistent with § 440.170(g), inpatient services furnished in an emergency hospital consistent with § 440.170(e), services in an IMD, and inpatient services furnished by other facilities that are not covered under Medicaid but are otherwise recognized by the State as “other services of similar acuity” for purposes of this short-term hardship exception. We believe that this is warranted, because an individual that is an inpatient in such facilities would be equally unable to meet the community engagement requirement as an individual receiving services in one of the facilities identified in section 1902(xx)(3)(B)(ii)(I) of the Act. Further, the inpatient services furnished by such facilities can be nearly identical to the services furnished by an inpatient hospital, nursing facility, ICD/IID, or inpatient psychiatric hospital.

For example, inpatient services provided by a VA medical facility do not meet the “inpatient hospital services” definition at § 440.10, as such facilities are not certified as a hospital under the Medicare Conditions of Participation requirements at 42 CFR part 482 and do not participate in Medicaid, but the services provided by such facilities can be nearly identical to Medicaid-covered “inpatient hospital

services.” We note that under section 1905(a) of the Act there is a general prohibition on Medicaid payment for any services provided to an individual in an IMD. While Medicaid payment cannot generally be made for services provided to an individual in an IMD, we believe it is reasonable to consider such services as “other services of similar acuity,” when the services are provided to an inpatient, since such an individual’s Medicaid eligibility is not terminated on the basis that they receive inpatient services in an IMD, they are unable to meet the community engagement requirement while receiving such services, and the inpatient services provided by an IMD can be nearly identical to “inpatient hospital services,” “nursing facility services,” or “ICF/IID services.” We are specifying at § 435.555(d)(1)(ii)(A) through (D) that “other services of similar acuity” includes inpatient services furnished in a CAH consistent with § 440.170(g), inpatient services furnished in an emergency hospital consistent with § 440.170(e), inpatient services furnished in an IMD, and inpatient services furnished by other facilities that are not covered under Medicaid but are otherwise recognized by the State in an IMD, and inpatient services furnished by other facilities that are not covered under Medicaid but are otherwise recognized by the State.

Regulations at § 440.2 define an “inpatient” for purposes of coverage of services under the State plan to be, among other things, an individual who “(1) Receives room, board and professional services in the institution for a 24 hour period or longer, or (2) Is expected by the institution to receive room, board and professional services in the institution for a 24 hour period or longer even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the institution for 24 hours.” States would use this definition when an applicable individual qualifies for a section 1902(xx)(3)(B)(ii)(I) exception because they are receiving the types of Medicaid-covered services to which this exception applies. States must also use the inpatient definition at § 440.2 when an applicable individual has an exception under section 1902(xx)(3)(B)(ii)(I) of the Act based on “inpatient” services that are not Medicaid-covered services. We recognize that States might not follow our “inpatient” definition at § 440.2 with respect to non-Medicaid-covered inpatient services. However, we believe that the “inpatient” definition at § 440.2 is a standard that non-Medicaid-covered

inpatient services should reasonably be able to meet and that for purposes of this short-term hardship exception it would be more administratively simple to apply one definition of “inpatient” services. For these reasons, we are providing at § 435.555(d)(1)(iii) that States must use the definition of “inpatient” at § 440.2 for any of the inpatient services described in the preceding paragraphs for purposes of the short-term hardship exception at section 1902(xx)(3)(B)(ii)(I) of the Act.

The statutory language addressing other services of similar acuity also specifies that those services include “outpatient care relating to other services specified” in section 1902(xx)(3)(B)(ii)(I) of the Act. We noted that the services specifically identified in section 1902(xx)(3)(B)(ii)(I) of the Act, and the ones we are adding to § 435.555(d)(1)(ii)(A) through (D), as described above, are exclusively provided in institution-based settings. We want to acknowledge the growing availability of services provided in the community as an alternative to institutional placement. When appropriate, such services have the potential to divert the need for the higher-cost institutional based services by treating certain conditions in a community setting or in an individual’s home. There are a wide range of medical and non-available in non-institutional settings.⁸⁹ Indeed, States have actively increased and continue to increase the availability of community that individuals have the choice to receive services in settings other than institutions.⁹⁰

Thus, we believe that limiting the short-term hardship exception described in section 1902(xx)(3)(B)(ii)(I) of the Act to individuals receiving services in institutions and not allowing it to be available to individuals receiving services of similar acuity outside of institutions would fail to account for the realities of current service delivery methods and place favor on institutional-based care in a way that is

⁸⁹ See for example, Carpenter AC, Stepanczuk, C, Murray, et al. (2025). “Trends in Users and Expenditures for Home and Community-Based Services as a Share of Total Medicaid Long-Term Services and Supports Users and Expenditures, 2023.” <https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/ltss-rebalancing-brief-2023.pdf>.

⁹⁰ “The Centers for Medicare & Medicaid Services (CMS) is committed to supporting States with strengthening and enhancing their LTSS systems and helping to ensure that Medicaid beneficiaries receive high quality, cost-effective, person-centered services in the setting of their choice.” CMS. (2020). “Long Term Services and Supports Rebalancing Toolkit,” pg. 3. <https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/ltss-rebalancing-toolkit.pdf>.

inconsistent with our efforts and policies with regard to individual choice. We also believe that individuals with service needs similar in acuity to an institutional stay, but who choose to receive their services in the community, would be similarly challenged in their ability to demonstrate community engagement compared to individuals receiving services in institutions. Therefore, we are interpreting “other services of similar acuity” to include certain noninstitutional services.

We have considered which noninstitutional services may qualify as “other services of similar acuity” as compared to the specific institutional-based services described in section 1902(xx)(3)(B)(ii)(I) of the Act. We believe it is clear that section 1902(xx)(3)(B)(ii)(I) of the Act requires that there be a connection between the specific institutional services described therein and any “services of similar acuity” included as part of this short-term hardship event. Section 1902(xx)(3)(B)(ii)(I) also refers to “outpatient care” relating to the other services specified in that subclause. In light of this language in section 1902(xx)(3)(B)(ii)(I) of the Act and in alignment with our position that the short-term hardship authorized under this provision should allow for noninstitutional services, at § 435.555(d)(1)(ii)(E) we are adding to the definition of this short-term hardship event noninstitutional services that an applicable individual receives that, but for the receipt of such services, would likely result in the individual receiving services provided in an inpatient hospital, nursing facility, ICF/IID, inpatient psychiatric hospital or other inpatient institutional settings of similar acuity (that is, services specified in section 1902 (xx)(3)(B)(ii)(I) of the Act and § 435.555(d)(1)(i) and (ii)(A) through (D)).

We believe it may sometimes be possible for States to identify these noninstitutional services on a categorical basis. We considered whether there are noninstitutional services that in all circumstances are delivered to an individual who has an acuity level similar to that of an individual who receives services from one of the specified institutions. We concluded that it is difficult to identify a complete list of such services, as many services, for example, that are authorized for section 1915(c) waivers (which serve individuals who, but for the receipt of such authorized services, would be treated in hospitals, nursing facilities, or ICF—IIDs) are also available under Medicaid to people who do not have such a clinical need.

However, a scenario that could meet the specified criteria would be an individual whose hospital discharge care plan prescribes services that could be provided in either one of the institutions specified or in the individual’s home or other noninstitutional setting and who elects the noninstitutional services. In this circumstance, the prescribed institutional services would clearly reflect that the individual would likely need such services in the absence of the individual’s election of the noninstitutional services. While the individual would still have to request the exception, the State could make the categorical determination of the individual’s need for “other services of similar acuity” without additional review of the individual’s acuity.

States could identify other circumstances in which an individual receives certain noninstitutional services that, matched with discrete circumstances, could lead to the categorical determination that, but for the individual’s noninstitutional services, the individual would likely require services in one of the institutions specified in § 435.555(d)(1)(i) and (ii)(A) through (D). Under § 435.555(d)(1)(ii)(E), a State could provide the short-term hardship exception for noninstitutional services in these circumstances.

States could also make individual evaluations for all applicable individuals who assert having services needs that, but for their receipt of noninstitutional services, would likely require that they be in one of the institutions specified in § 435.555(d)(1)(i) and (ii)(A) through (D). When making such individualized determinations, the State would have to identify the *particular* noninstitutional services that the individual receives that help the individual avoid the likelihood of requiring one of the institutional services described in § 435.555(d)(1)(i) and (ii)(A) through (D), as the provision is limited to individuals who, if not receiving one of the specified services, receive “other services of similar acuity.”

5. Emergency and Disaster Areas

The definition of a “short-term hardship event” includes the circumstance of an individual residing in a county or equivalent unit of local government in which there exists an emergency or disaster that has been declared by the President under the NEA or the Stafford Act. We implement these parts of the short-term hardship exception at § 435.555(d)(2).

The National Emergencies Act (NEA) (Pub. L. 94–412), codified at 50 U.S.C. 1621 *et seq.*, authorizes the President to proclaim a national emergency. Such a Presidential Declaration must be immediately transmitted to Congress and published in the **Federal Register**. Various provisions of Federal law authorize special presidential powers when a national emergency has been proclaimed by the President. Unlike declared disasters, national emergencies are generally not declared for discrete areas of the country and are at times declared for situations that, while affecting the United States, are external to its borders. For example, recent emergency declarations have been declared for the “southern border” and “northern border,” in which neither specific States nor discrete areas of the States are identified,⁹¹ while, a separate 2022 emergency is still in effect regarding United States nationals held hostage abroad.⁹² Additionally, such emergencies typically do not contain a specific calendar end date.⁹³ Emergencies or disaster declared by the President pursuant to the NEA, however, are included in section 1902(xx)(3)(B)(ii)(II)(aa) of the Act.

Using the example of the emergencies declared under the NEA for the “southern border” and “northern border,” we have considered that one possible interpretation of section 1902(xx)(3)(B)(ii)(II)(aa) of the Act would be that all States that border Canada and Mexico are, in their entirety, subject to a national emergency (given that the declarations pertaining to them did not specify discrete localities in those States), and that any such State that adopts the short-term hardship exception will have its entire applicable individual population excepted from community engagement unless and until such disaster is declared over.

⁹¹ “Declaring a National Emergency at the Southern Border of the United States,” Proclamation 10886, January 20, 2025, 90 FR 8327 (January 29, 2025). <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/>; “Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border,” Executive Order 14193, February 1, 2025, 90 FR 9113 (February 7, 2025). <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-duties-to-address-the-flow-of-illicit-drugs-across-our-national-border/>.

⁹² “Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home,” Executive Order 14078, July 19, 2022, 87 FR 43389 (July 21, 2022). <https://www.federalregister.gov/documents/2022/07/21/2022-15743/bolstering-efforts-to-bring-hostages-and-wrongfully-detained-united-states-nationals-home>.

⁹³ *Ibid.*

We are concerned, however, that this interpretation would in effect nullify the community engagement requirement for an indefinite period of time in such States, and would be inconsistent with the concept of a *short-term* hardship. Section 1902(xx)(3)(B)(ii)(II) of the Act lists three short-term hardship circumstances that, generally, relate to emergencies, disasters, and comparatively high unemployment. Because applicable individuals in States that elect the short-term hardship option are deemed to be in compliance with community engagement when residing in one of the areas described in section 1902(xx)(3)(B)(ii)(II) of the Act, we believe it is reasonable to interpret section 1902(xx)(3)(B)(ii)(II) of the Act as describing circumstances that affect an individual's ability to demonstrate community engagement.

This interpretation is also supported by the example of other emergencies declared pursuant to the NEA. For example, in "Declaring a National Energy Emergency," Executive Order 14156, Section 1, January 20, 2025, 90 FR 8433 (January 29, 2025), it is declared that "[t]he energy and critical minerals ("energy") identification, leasing, development, production, transportation, refining, and generation capacity of the United States are all far too inadequate to meet our Nation's needs," and that the problems giving rise to this issue are "most pronounced in our Nation's Northeast and West Coast." For purposes of the short-term hardship exception, it is unclear whether this means that these areas may be properly classified as areas in which "there exists an emergency," as required by section 1902(xx)(3)(B)(ii)(II)(aa) of the Act, or if this *national* emergency is based on a sum total of energy-related problems throughout the country in which the Northeast and West Coast weigh heaviest but which are not themselves experiencing an emergency.

For these reasons, we therefore believe that it is appropriate to further define the scope of a short-term hardship exception in NEA-related circumstances. Consistent with our authority to specify standards for the procedures established by States for short-term hardship under section 1902(xx)(3)(B)(i) of the Act, we specify at § 435.555(d)(2)(i) that a short-term hardship based on an NEA-declared emergency exists when the emergency affects the ability of applicable individuals to demonstrate community engagement in a particular county (or equivalent unit of local government), multiple counties, or statewide. Information that will be relevant to determining whether this is the case

would be the barriers to demonstrating community engagement that the NEA-declared emergency presents, how businesses are impacted by the NEA-declared emergency, and other information tending to show an adverse impact on the ability of applicable individuals to demonstrate community engagement. To ensure compliance with this definition, we are also requiring at § 435.555(d)(2)(iii) that a State notify CMS timely of its plan to effectuate a short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act, and are providing at § 435.555(d)(2)(iv) that CMS will review States' use and implementation of these exceptions.

Section 1902(xx)(3)(B)(ii)(II)(aa) also includes a reference to emergencies and disasters declared by the President pursuant to the Stafford Act. The Stafford Act (Pub. L. 100–707), codified at 42 U.S.C. 5122, is intended to "provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from . . . disasters." The assistance is triggered by a presidential declaration and applies in cases of hurricanes, tornados, earthquakes, floods, fires, and other circumstances.

Presidential declarations made under the Stafford Act are published in the **Federal Register**. Ordinarily, the declaration identifies the State in which the emergency or disaster has occurred, the particular areas adversely affected by the event, and the "incident period" during which the disaster-causing event occurred. Typically, the duration of the incident period has expired at the time of the declaration, sometimes by several months (for example, "Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska," 89 FR 91866, November 20, 2024 (relating to landslides), identifying the incident date as August 25, 2024, and the presidential declaration November 13, 2024). The declaration itself then initiates the authority for assistance intended to alleviate damages and losses sustained as a result of the disaster or emergency.

The declarations, however, do not expire, nor do the statutory or regulatory authorities for the assistance dictate an established duration. "For example, Federal Emergency Management Agency (FEMA) may designate a hurricane's incident period as the sequence of 5 days during which winds and flooding caused injuries and damages. FEMA may then provide assistance (often over the course of months or years) to cover

the costs of losses, damages, and injuries sustained during those 5 days." ⁹⁴ This means that at the time of a Stafford Act declaration, the incident giving rise to the declaration may be over, and the assistance thus authorized by the declaration will be indefinite. Because section 1902(xx)(3)(B)(ii)(II)(aa) of the Act requires that applicable individuals be deemed to have met community engagement in a month in which "there exists an emergency or disaster declared by the President under . . . [the Stafford Act]," we have considered when such an emergency or disaster "exists" for purposes of the Stafford Act-related exception and address this topic at § 435.555(d)(2)(iv).

We have determined that at a minimum, applicable individuals residing in the designated area identified in a Stafford Act declaration must be deemed to have demonstrated community engagement for the month (or months) during which the identified incident period occurred. For example, if the President issues a Stafford Act declaration on May 1st and identifies March 25th through March 30th as the incident period, applicable individuals residing in the area in which the disaster or emergency occurred must be deemed to have met community engagement for at least the month of March (in States that have elected the option for a short-term hardship exception).

For purposes of the months following the end of the month in which the incident period occurred (in the prior example, the months of April and beyond), we note that section 1902(xx)(3)(B)(ii)(II)(aa) of the Act does not limit the duration of the exception for a Stafford Act disaster to its incident period. Thus, we would consider it reasonable for a State to extend the exception, given that the effects of a disaster invariably extend in time beyond the discrete time period in which a disaster actually occurred.

We therefore grant States the option to seek CMS approval for an exception period beyond the incident period, based on submission of information showing that barriers to demonstrating the community engagement requirement in § 435.552 in the relevant area persist. In these circumstances, we anticipate that States will regularly communicate with CMS. The information we would expect of States that would support the continued applicability of the exception due to ongoing barriers to demonstrating

⁹⁴ Horn DP, Lee E, Webster E. (2023). "Closing the Incident Period for the Stafford Act Declaration for the COVID-19 Pandemic," Congressional Research Service, pg. 1. <https://www.congress.gov/crs-product/IN12106>.

the community engagement requirement in § 435.552 in the relevant area might, for example, relate to the extent to which businesses have not reopened, transportation has been hampered, or temporary housing or relocation of individuals in the community has become necessary. Other information could also be relevant to support a State's request. We implement the short-term hardship event for emergencies and disasters declared by the President pursuant to the Stafford Act definition at § 435.555(d)(2)(iv).

6. Areas With Certain Levels of Unemployment

Section 1902(xx)(3)(ii)(II) of the Act also includes in the definition of a "short-term hardship" event the circumstance of an applicable individual residing in a county or equivalent unit of local government that has an unemployment rate that is at or above the lesser of 8 percent or 1.5 times the national unemployment rate. To implement a short-term hardship exception in this circumstance a State first must seek CMS approval. We implement this component of the short-term hardship event definition at § 435.555(d)(3).

Notably, Section 1902(xx)(3)(B)(ii)(II)(bb) of the Act does not specify a source that States or CMS must use to determine whether a county or equivalent unit of local government has an unemployment rate that has reached one of the thresholds described therein. The U.S. Bureau of Labor Statistics (BLS) is the Federal government's primary source for unemployment information⁹⁵ and maintains statistics for 7,500 different areas in the U.S., including, but not limited to, States, small labor market areas, and counties and county equivalents.⁹⁶ The "Local Area Unemployment Statistics" program ("LAUS" program) that is maintained by the BLS is a Federal-State cooperative effort, and both Federal programs and State and local governments use LAUS information for various purposes.⁹⁷ (References herein to "BLS information" include the LAUS information.)

Because the BLS information is well-known and utilized by both States and the Federal government, CMS considers it appropriate to make the BLS information the standard for evaluating whether a State's request to apply the

short-term hardship exception in this circumstance is consistent with § 435.555(d)(3); for example, if a State requests the unemployment-related undue hardship exception on the basis that an unemployment rate in a particular county (or counties) is at or above 8 percent, we will consult the unemployment rate in the county or counties using the BLS statistics, presume the accuracy of such information, and use it to determine (subject to a State's rebuttal, as described below) whether the particular county's (or counties') unemployment rate is at or above 8 percent.

We understand, however, that a State might believe that the available BLS information does not reflect the actual circumstances in a particular county or other unit of local government. For example, as available BLS data is commonly based on data from previous months, the BLS adjustment of a county's unemployment rate in a county that experiences widespread layoffs from a major employer may take multiple months. To account for such a situation, for any month for which the available BLS data is based on data from previous months, a State may submit preliminary data from a reliable source (such as a State labor department) reflecting the unemployment rate in a county pending the BLS adjustment (if an adjustment is necessary) of the county's figure. We will review the preliminary data and will approve a State's request to implement this exception if we determine its data persuasive. If we determine the State's preliminary data persuasive and the BLS data, when updated, conflicts with the State's data and indicates an unemployment rate below the thresholds in section 1902(xx)(3)(B)(ii)(II)(bb) of the Act, we will not require revision of short-term hardship exceptions that were applied based on our approval of the State's preliminary data but will take the updated data into consideration.

As noted in section 1902(xx)(3)(B)(ii)(II)(bb) of the Act, the unemployment-related short-term hardship exception is subject to a State submitting a request to the Secretary "made in such form, at such time, and containing such information as the Secretary may require." We will consider it sufficient if a State submits a request to CMS, in either electronic or hard-copy form, to apply the unemployment-related short-term hardship exception and identifies the particular county or counties, or equivalent unit(s) of local government, in which the State alleges the unemployment rate to have reached the

lesser of the two thresholds described in § 435.555(d)(3). The State must also provide information from BLS or another reliable source to demonstrate that the unemployment rate has reached the appropriate threshold. We note that while the unemployment-related short-term hardship exception is contingent on a State submitting a request to the Secretary, section 1902(xx)(3)(B) of the Act does not mandate that a State make the request even if it believes one of the relevant unemployment thresholds has been reached; that is, a State that has elected the short-term hardship exception is not required to implement the unemployment-related exception when conditions are present in the State that would support it. In effect, implementing the unemployment-related short-term hardship event is optional for States that elect the short-term hardship exception.

We further note that, distinct from the short-term hardship events relating to applicable individuals who receive services in certain medical institutions (or receiving services of similar acuity) or needing to travel outside of their community for an extended period of time to receive medical services (as described in section II.G.7. of this IFC), section 1902(xx)(3)(B) of the Act does not require an applicable individual (or individual acting on the applicable individual's behalf) to request a short-term hardship exception in the circumstances described in section 1902(xx)(3)(B)(ii)(II) of the Act. The events described in section 1902(xx)(3)(B)(ii)(II) of the Act are broadly impactful in their nature and, especially in the case of disasters and emergencies, can hamper the ability of both local governments and individuals to function in a routine manner. We consider it reasonable to require that, for applicable individuals in States that have elected the short-term hardship exception and who are residing in areas in which a disaster has been declared under the Stafford Act or an emergency under the NEA (and in which, in the latter circumstance, CMS has approved the designation of a short-term hardship, as described previously), or in areas that are experiencing comparatively high unemployment, a State agency must apply an automatic short-term hardship exception to such applicable individuals for the duration of the particular circumstances; that is, a State would deem all applicable individuals residing in the affected areas to have demonstrated community engagement for the relevant months, without requiring applicable individuals to make such a request,

⁹⁵ See generally, "About the U.S. Bureau of Labor Statistics," U.S. Bureau of Labor Statistics, last modified February 28, 2025, <https://www.bls.gov/about-bls.htm>.

⁹⁷ "Local Area Unemployment Statistics," U.S. Bureau of Labor Statistics, <https://www.bls.gov/lau/>.

requesting any verification relating to these events from such individuals, or conducting any evaluation of the extent to which any such applicable individuals are affected by the circumstances.

7. Applicable Individual or Dependent Must Travel Outside of Their Community for an Extended Period of Time To Receive Medical Services Necessary for a Serious or Complex Medical Condition

Section 1902(xx)(3)(B)(ii)(III) of the Act provides that, in States that adopt the short-term hardship exception, applicable individuals are excepted from demonstrating community engagement when, for all or part of a month, they or their dependent must travel outside of their community for an extended period of time to receive medical services necessary to treat a serious or complex medical condition (as described in section 1902(xx)(9)(A)(ii)(V)(ee) of the Act) that are not available within their community of residence. We implement this component of the short-term hardship event definition at § 435.555(d)(4). We provide the following explanation for its elements.

Section 1902(xx) of the Act does not define “dependent.” Section 1902(xx)(9)(ii)(III) of the Act refers to a “dependent child” within the definition of a “specified excluded individual,” and we define “dependent child” for that purpose at § 435.554(a). Because the “dependent” reference in section 1902(xx)(3)(B)(ii)(III) of the Act is not similarly limited to a “child,” we do not believe our analysis above (section II.E.3.e. of this IFC), relating to specified excluded individuals who are parents, guardians, caretaker relatives, or family caregivers to *dependent children*, is warranted here.

We are defining a “dependent” at § 435.555(b)(1), for the purposes of the short-term hardship circumstance described in section 1902(xx)(3)(B)(ii)(III) of the Act, as: a minor (as defined under State law) child of the applicable individual who is living with the applicable individual; a tax dependent of the applicable individual (whether or not the tax dependent is a minor child of the individual or residing with the applicable individual); or an individual for whom the applicable individual has been appointed a guardian by a court. We believe that the dependent relationship in each of these cases can be reasonably considered categorical

and represents common uses of the term “dependent.”⁹⁸

We note that the statute does not require that the applicable individual travel with the dependent for purposes of the exception.

We have considered, however, that the circumstance described in section 1902(xx)(3)(B)(ii)(III) of the Act is that of an applicable individual being deemed to have demonstrated community engagement when a dependent of that individual must travel outside of their community for necessary medical care, and we believe it is reasonable to conclude that the statute contemplates that the need for the dependent to travel for necessary medical care will significantly impact the applicable individual. If the applicable individual is not actually traveling with their dependent, we believe that the applicable individual could be impacted by the dependent’s need to travel for medical care by needing to take leave from employment or to be absent from other scheduled community engagement activities for reasons related to the dependent’s condition or travel, being responsible for managing the logistics of the medical appointment or the travel, needing to take the dependent to local medical appointments related to the condition that requires the travel, or needing to be available to communicate with medical providers.

Even though we are not interpreting section 1902(xx)(3)(B)(ii)(III) of the Act to impose a travel requirement on the applicable individual when it is the dependent of such individual who must travel for the relevant medical care, we recognize that this circumstance offers the applicable individual a short-term *hardship* exception to the community engagement requirement. To reflect the absence of a co-travel requirement in section 1902(xx)(3)(B)(ii)(III) of the Act while giving meaning to the statutory reference to a *hardship* that an applicable individual will sustain in the absence of actually traveling with their dependent, we believe it is reasonable for an applicable individual who is not traveling with the dependent to verify that they have experienced a short-term hardship in order to qualify for the exception.

Accordingly, at § 435.555(d)(4)(i), we require an applicable individual who does not travel with their dependent for the necessary medical treatment to verify their efforts on behalf of the dependent that are directly related to the dependent’s travel or medical condition that gives rise to the need for

the travel. Specifically, the applicable individual must demonstrate having to take leave from employment or having to absent themselves from other community engagement activities for reasons related to the dependent’s condition or travel. Examples of reasons related to the dependent’s condition or travel could be taking the dependent to local medical appointments related to or in preparation for the medical appointment that requires the travel; conducting logistical activities relating to the travel; and maintaining primary responsibility for communicating with the dependent’s medical providers.

Under section 1902(xx)(3)(B)(ii) of the Act, the short-term hardship exception only applies during a month in which, for part or all of such month, the applicable individual, or the applicable individual’s dependent, must travel outside of their community. This means that, whether the applicable individual travels with the dependent or not, the exception only applies in the month in which the dependent travels. Thus, if an applicable individual must take leave from work or leave or be absent from other community engagement activities in the month preceding the dependent’s travel, a short-term hardship exception will not apply because the dependent is not traveling. Additionally, the leave from employment or leave or absence from other community engagement activities must occur in the month in which the dependent travels in order for the applicable individual who is not traveling with the dependent to receive the exception.

The definition at § 435.554(c)(5)(i)(E) of a “serious or complex medical condition” would also apply to the short-term hardship event for travel outside of the community to receive medical services necessary to treat a serious or complex medical condition.

We have considered whether and how other terms and phrases in section 1902(xx)(3)(B)(ii)(III) of the Act should be defined where section 1902(xx) of the Act does not define them. We consider the phrase “community” to be subject to several different interpretations. While numerous uses of “community” exist in title XIX of the Act, the term is generally not defined by itself within it (“home and *community*-based services” are described in section 1915(c) and (i) of the Act, for example, and section 1924 of the Act essentially defines a “*community* spouse” as an individual who is not in a medical institution or nursing facility).

What is considered a “community” will typically vary from one State to another, such as between predominantly rural States and others with numerous

⁹⁸ See, for example, <https://www.merriam-webster.com/dictionary/dependent>.

urban areas, or even within a State. Therefore, we are not defining this term for purposes of this rule and are instead providing States with the discretion to determine what would count as a “community” for purposes of the short-term hardship exception. A State could reasonably define “community” to align with political subdivisions; that is, that when an applicable individual (or the dependent of such individual) must leave their political subdivision, they will have left their “community.” Alternatively, a State could reasonably define community based on proximity to the individual’s residence; for example, that an individual leaves their community when needing to travel more than 25 miles or a certain number of hours (or has to stay overnight). Other definitions of “community” may be reasonable, although we remind States that the exception is for a short-term *hardship*. As we have instructed States in the context of the undue hardship exceptions to the application of the asset-transfer and trust rules (as described in section II.G.2. of this IFC), the mere causation of inconvenience is insufficient to establish a *hardship*.⁹⁹ States should therefore develop standards for a “community” that make leaving it pose some measurable complication for applicable individuals and their dependents while at the same time not creating a standard that is too onerous. (For example, a State should not define a “community” to be an entire State such that only when applicable individuals or their dependents have to leave the State does the short-term hardship apply.)

“Period of time” is also used in title XIX of the Act as a general, undefined phrase (for example, in section 1902(a)(44), (v), and (ee)(3)(A)(iii) of the Act) and these other uses do not contain a modifier such as “extended,” as is used in section 1902(xx)(3)(B)(ii)(III) of the Act. We are not defining “extended period of time” in this rule and are thus providing States discretion to create a definition and standard for “extended period of time,” consistent with the nature of the short-term hardship exception. Section 1902(xx)(3)(B)(ii) of the Act directs that the short-term hardship circumstances described therein exist when, for “part or all of [a] month,” all of the criteria for one of the circumstances is met. “Part” of a month is therefore sufficient for purposes of any of the short-term hardship circumstances, which means that “extended period of time” could be less than a full month, and States are

not permitted to require that it be at least a full month or longer.

Finally, under section 1902(xx)(3)(B)(ii)(III) of the Act, the medical services requiring the travel described in that section must be ones that “are not available within” the applicable individual’s or dependent’s “community of residence.” We do not interpret “community of residence” to have a distinct meaning from “community” within section 1902(xx)(3)(B)(ii)(III) of the Act. For purposes of evaluating the unavailability of the services within such community, we again believe that States should have the discretion to develop the standards to evaluate this, subject again to the “hardship” concept that is central to this exception.

States may find helpful their processes for determining if a Medicaid eligible individual needs related travel expenses¹⁰⁰ (in particular meals, lodging, and attendants) for non-emergency medical transportation (NEMT) or out-of-State services as described at § 431.52, when designing a process to determine if an individual must travel outside of their community under the short-term hardship exception at section 1902(xx)(3)(B)(ii)(III) of the Act. State processes for NEMT-related travel expenses and out-of-State services are often different, so States could look to one or both processes in implementing this short-term hardship exception. While States must pay for NEMT-related travel expenses when it is necessary for a beneficiary to secure covered services, States have flexibility to determine the processes to determine if a beneficiary requires NEMT to secure covered services and if related travel expenses are necessary for that NEMT trip. Under § 431.52 States must cover out-of-State services when medical services are needed because of a medical emergency; medical services are needed and the beneficiary’s health would be endangered if they were required to travel to their State of residence; the State determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other State; or it is general practice for beneficiaries in a particular locality to use medical resources in another State. However, States have the flexibility to establish the process to determine if an out-of-State service meets one of the required

criteria under § 431.52. It is our understanding that the State processes for determining the necessity of NEMT-related travel expenses and out-of-State services typically factor in an individual’s medical condition, their need for medical services, the availability of a medical service in the individual’s geographic area (for example, number of providers in their particular geographic area who accept Medicaid and can furnish the relevant medical services, time and distance to providers who are able to furnish services if closer providers are unavailable, provider acceptance of new patients, that the medical services are more readily available in a different geographic area, etc.), and the impact a lack of the medical services would have on the individual. Thus, either of these State-established processes might be used by a State as a starting point for identifying when an applicable individual can receive this exception.

H. Assessing Compliance With the Community Engagement Requirement

This section of the IFC discusses how States must assess compliance with the community engagement requirement in the context of applications, renewals, certain redeterminations in connection with changes in circumstances, and, at State option, more frequent verifications between renewals.

Section 1902(xx)(1) of the Act, as implemented in new § 435.556, provides that States must require applicable individuals to demonstrate community engagement as a condition of eligibility for medical assistance at application and renewal. Section 1902(xx)(4) of the Act provides States the option to conduct more frequent verifications of compliance with the community engagement requirement. Section II.K. of this IFC describes when States must first implement the community engagement requirement.

Subject to certain limitations, section 1902(xx)(1) of the Act allows States to determine the number of months for which applicable individuals must demonstrate community engagement. Generally, the specific months for which an applicable individual must demonstrate community engagement differ for those who are applying for medical assistance under the State plan (or a waiver of such plan) and those who are already enrolled and receiving medical assistance under the State plan (or a waiver of such plan). However, in both cases, we use the term “review period” to reference the time period under consideration, during which an applicable individual must demonstrate the required number of months of

⁹⁹ Section 3258.11, 3259.8(A) of the State Medicaid Manual.

¹⁰⁰ CMCS State Medicaid Director letter #23–005, “Assurance of Transportation: A Medicaid Transportation Coverage Guide.” (September 28, 2023), pg. 30. Available at <https://www.medicaid.gov/federal-policy-guidance/downloads/smd23006.pdf>.

community engagement (or be deemed to being doing so through an exception) to fulfill the requirement.

1. Assessing Applicability of the Community Engagement Requirement

As a threshold matter, the State must first confirm whether an applicant or beneficiary is an applicable individual as defined at § 435.551. This means the State must determine whether the applicant or beneficiary is a specified excluded individual as defined at § 435.554 before determining whether they have demonstrated or are deemed to have demonstrated community engagement. Because a specified excluded individual, as described at § 435.554, is not an applicable individual who must demonstrate or be deemed to demonstrate community engagement during the review period, the State determines if someone is a specified excluded individual or an applicable individual at application based on the month of application, as a State does when evaluating other factors of Medicaid eligibility. At renewal, this means the State determines if someone is a specified excluded individual or an applicable individual when processing the renewal. As further described in section II.E. of this IFC, specified excluded individuals are not applicable individuals and are therefore not required to demonstrate community engagement as a condition of eligibility. Thus, the general process for assessing compliance as described in this section would not apply to a specified excluded individual. See section II.H.3.d. “Processing Certain Changes in Circumstance,” at the end of this section for a discussion of how to address an individual who becomes an applicable individual after being a specified excluded individual or when moving from an eligibility group that does not include applicable individuals to the adult group or a section 1115 demonstration that does.

2. Assessing Compliance for Applicants

At new § 435.556(a)(1), we implement the requirement under section 1902(xx)(1)(A) of the Act that, for an applicable individual, the State must require the individual to demonstrate community engagement as a condition of eligibility at application. Specifically, the State must require an applicable individual who files an application for medical assistance under the State plan (or a waiver of such plan) to demonstrate community engagement for at least 1 but not more than 3 consecutive months, as specified by the State, immediately preceding the month of application. At application, the

review period is the State-specified number of months prior to the month of application for which someone must demonstrate community engagement. We interpret the requirement to mean that at a minimum, States must require applicable individuals to demonstrate community engagement in the 1 month prior to the month of application. However, States may elect to extend this review period to 2 or 3 consecutive months prior to the month of application. An applicable individual who files an application is considered to have successfully met the requirement if they demonstrate community engagement for all of the months elected by the State. States must specify the number of consecutive months for which an applicable individual must demonstrate community engagement prior to the month of application in the State plan.

We acknowledge that assessing compliance with the community engagement requirement will necessitate changes to existing application processes and procedures. As States consider the changes that are necessary to implement this requirement, States may need to consider how these changes affect the application process, including the paper and online applications, overall timelines, and workflows. States will need to make the necessary adjustments to ensure efficient eligibility and enrollment operations and compliance with processes for all Medicaid populations.

3. Assessing Compliance for Enrolled Beneficiaries

At new § 435.556(a)(2), we implement the requirement under section 1902(xx)(1)(B) of the Act that the State must require an applicable individual who is enrolled and receiving medical assistance to demonstrate community engagement as a condition of eligibility.

Section 1902(xx)(1)(B) of the Act specifies that States must require an applicable individual who is enrolled and receiving medical assistance to demonstrate community engagement “for 1 or more months, as specified by the State, whether or not consecutive” at renewal or, at State option, more frequently. We interpret this to mean that a State must specify the number of months for which the enrolled applicable individual must demonstrate community engagement either between renewals or, if elected by the State, between more frequent verifications of community engagement. The State must specify a minimum of 1 month and may elect to require that individuals demonstrate more than 1 month of

compliance with the community engagement requirement during the review period. The State must consider a beneficiary who is an applicable individual to have successfully met the requirement if during any part of the review period under consideration (either between renewals or between more frequent verifications, if elected by the State), the beneficiary demonstrates or is deemed to demonstrate community engagement for the number of months specified by the State. The statute does not specify the maximum length of the review period. To ensure that a State does not require an individual to demonstrate community engagement outside of the review period, at § 435.556(b), we prohibit States from requiring an applicable individual to demonstrate community engagement for a number of months that exceeds the applicable review period.

Section 1902(xx)(a)(1)(B) of the Act provides that, at renewal or at more frequent verification, if elected by the State, an applicable individual must demonstrate community engagement for 1 or more months “whether or not consecutive.” Although the statute leaves to the State’s discretion the number of months for which a beneficiary who is an applicable individual must demonstrate community engagement, the clause, “whether or not consecutive” is not modified by a grant of discretion to the State. We therefore interpret it not to permit the State to require a beneficiary to demonstrate community engagement for consecutive months, if the State elects to require more than 1 month, or to dictate the specific month(s) for which an applicable individual must demonstrate community engagement during the review period between renewals or more frequent verifications, if elected by the State.

We will discuss next how the review period is defined for beneficiaries and how States must assess compliance at renewal or at more frequent verifications. We also address requirements for States that elect to conduct more frequent verifications of community engagement, beyond the minimum required verification as part of a beneficiary’s regular renewal.

a. Assessing Compliance at Renewal if the State Does Not Elect To Conduct More Frequent Verifications of Compliance With the Community Engagement Requirement

To implement section 1902(xx)(a)(1)(B)(i) of the Act, at § 435.556(a)(2)(i), we require States that do not opt to conduct more frequent verifications of compliance with the

community engagement requirement to assess an applicable individual's compliance during the period between such individual's most recent determination or redetermination of eligibility and the date the individual's renewal is due, consistent with section 1902(e)(14)(L) of the Act and § 435.916. The period of time between the effective date of the individual's last determination or redetermination of eligibility and the date the renewal is due is also referred to as the individual's "eligibility period." For beneficiaries, their eligibility period is the "review period" at renewal when States do not conduct more frequent verifications of compliance with the community engagement requirement. As part of the renewal process, a State must verify that a beneficiary who is an applicable individual demonstrated or is deemed to have demonstrated community engagement for the required number of months during the review period (which is the same period of time as the eligibility period).

In this context, we interpret "redetermination of eligibility" to mean the redetermination conducted during the individual's periodic renewal of eligibility under section 1902(e)(14)(L) of the Act and § 435.916(a), rather than as a result of a change in circumstances following the redetermination procedures at § 435.916(d). We considered whether to interpret "redetermination of eligibility" to also include redeterminations based on instances when the State only evaluates the eligibility factor for which the individual experienced a change in accordance with § 435.916(d)(1)(i). However, we did not choose to include such redeterminations because they are limited in nature and could shorten an individual's review period based on a change unrelated to community engagement.

At renewal, States must require a beneficiary who is an applicable individual to demonstrate at least 1 month of community engagement during the review period. When considering whether to require applicable individuals to demonstrate more than 1 month of community engagement at renewal, a State should consider how long its renewal process currently takes in relation to the length of the eligibility period. We remind States that most individuals required to demonstrate community engagement are also subject to the new 6-month renewal requirement under section 1902(e)(14)(L) of the Act. Because most States currently take between 60 and 90 days to complete all steps in the renewal process for a cohort, an

individual subject to renewals once every 6 months may only have been enrolled in their current eligibility period for approximately 3 months when the State initiates the next renewal and begins checking reliable information available to the State. As such, in electing the number of months during the review period for which a beneficiary must demonstrate community engagement at renewal, a State should consider its ability to access timely data to verify compliance with community engagement and otherwise renew eligibility, consistent with the community engagement *ex parte* verification requirements in section 1902(xx)(5) of the Act, this IFC, and existing Federal renewal requirements at § 435.916(a).

b. Assessing Compliance When the State Conducts More Frequent Verifications of Compliance With the Community Engagement Requirement

To implement section 1902(xx)(a)(1)(B)(ii) of the Act, at § 435.556(a)(2)(ii), we specify that, if a State elects to verify compliance more frequently than at a beneficiary's renewal, the State must require a beneficiary who is an applicable individual to demonstrate community engagement during the period between the most recent verification of community engagement and the date the next verification is due, consistent with § 435.557(d). As such, States must evaluate whether an applicable individual demonstrated or is deemed to have demonstrated community engagement for the number of months specified under § 435.556(a)(2), during the period between the date of the beneficiary's last verification of community engagement and the date the next scheduled verification of community engagement is due. The next scheduled verification of community engagement may be either the next more frequent verification of compliance with community engagement that occurs during the eligibility period or the verification that occurs during the individual's next renewal. In the context of a State that elects more frequent verifications, the review period is the time between each verification of community engagement, including the verification that occurs as part of the regular renewal.

As an illustrative example, consider a State that elects to verify community engagement more frequently than at regularly scheduled renewals and does so in the third month of a 6-month eligibility period. The State requires an applicable individual to demonstrate community engagement for 1 month at

each verification of community engagement. Prior to assessing compliance, the State must first confirm the beneficiary is still an applicable individual and is not a specified excluded individual, as defined at § 435.554. If the beneficiary remains an applicable individual, then, to conduct a verification of community engagement in the third month of eligibility, the State will check information available, including information from data sources, to determine whether the applicable individual demonstrated community engagement, including by meeting an exception under § 435.553 or, if applicable, § 435.555, for at least 1 month since the last verification of community engagement. In this specific scenario, the review period would consist of the first, second, and third months of the eligibility period, and the applicable individual could meet the requirement by demonstrating community engagement (including by being deemed as demonstrating community engagement) in any one of these 3 months. If the State is unable to verify the applicable individual's demonstration of community engagement, then the State would follow the noncompliance procedures described in section II.J. of this IFC and § 435.558. If the State is able to verify the applicable individual's demonstration of community engagement, the individual's eligibility period continues. Then, at renewal, the State will again verify whether the individual is a specified excluded individual and, if not, verify whether the applicable individual demonstrated 1 month of community engagement between the fourth month of the eligibility period and the end of the eligibility period.

States that verify community engagement more frequently than at each renewal will need to consider the timing of the additional verifications, the frequency of renewals for applicable individuals, and the time it takes the State to process renewals for a cohort. Doing so will help minimize concurrent verifications that create additional administrative burden for the State and individual, which could occur when conducting a more frequent verification overlaps with the time period the individual's renewal is in progress. For example, if a State conducts the more frequent verification of community engagement in month 3 of a 6-month eligibility period, it is possible the State is still processing the verification, including following applicable noncompliance procedures, into month 4 of an individual's eligibility period,

while at the same time the State's system is initiating the individual's renewal that must be completed by the end of the 6-month eligibility period.

Additionally, we remind States of the requirement at § 435.916(d) to promptly redetermine eligibility if they receive information about a change in a beneficiary's circumstances that may affect eligibility. States that elect to conduct more frequent verifications of community engagement compliance may receive information that may affect other factors of eligibility, such as changes in income, and the State must take prompt action to redetermine eligibility based on such information when it is received.

c. Prohibition on Assessing Compliance With Community Engagement for Specified Excluded Individuals

At new § 435.556(c), we specify that States may not apply the requirements under § 435.556(a) to specified excluded individuals defined at § 435.554. Because specified excluded individuals are not applicable individuals, States may not require such individuals to demonstrate or be deemed as demonstrating community engagement for the otherwise applicable number of months at application, renewal, or, if applicable, more frequent verification. If a State identifies that an applicable individual meets an exclusion, the person becomes a specified excluded individual and is no longer subject to the requirements at § 435.556(a). This could be identified during the renewal process, as part of a more frequent verification of community engagement (if elected by the State), identified through information that becomes available to the State, or due to the individual reporting a change in their status to the Medicaid agency. Section II.I.7. of this IFC addresses how States must verify whether an individual is a specified excluded individual.

d. Processing Certain Changes in Circumstances

As a reminder, States are required to have procedures in place to ensure individuals make timely and accurate reports of any changes that may affect eligibility, in accordance with § 435.916(c). As described in section II.L. of this IFC, individuals who are enrolled in an eligibility group subject to the community engagement requirement must receive outreach about the community engagement requirement, including information on how to report changes. In accordance with § 435.916(d), the State must promptly act on any changes in circumstances that may affect eligibility,

and if a State has information about anticipated changes in a beneficiary's circumstances that may affect their eligibility, the State must redetermine eligibility at the appropriate time based on such changes. We note that not all changes related to an individual's status as a specified excluded individual or demonstration or deemed demonstration of community engagement will affect a person's Medicaid eligibility. State decisions on how many months individuals must demonstrate compliance with community engagement in the review period and the individual's circumstances will influence whether a change related to community engagement is material to the individual's Medicaid eligibility. However, States should ensure they have procedures for beneficiaries to report such changes, as the individual may not know whether a change may affect their eligibility. In addition, States have an obligation to notify individuals of changes to eligibility requirements and rights and responsibilities, such as losing their specified excluded status, which is described further in this section of the IFC.

(1) Changes in Circumstances for Beneficiaries Enrolled on Another Basis Who Become Eligible for a Group Subject to the Community Engagement Requirement

States will encounter instances when a beneficiary enrolled in an eligibility group that is not subject to the community engagement requirement experiences a change in circumstance and becomes potentially eligible for an eligibility group for which community engagement is a factor of eligibility, such as the adult group or an applicable section 1115 demonstration described at § 435.551. When redetermining eligibility based on the change and considering eligibility on other bases, a State must evaluate whether the beneficiary is potentially eligible in the adult group or in an applicable section 1115 demonstration. If so, the State must evaluate whether the beneficiary would be an applicable individual. If the beneficiary is determined to be an applicable individual, the State must then determine whether the beneficiary meets or is deemed to meet the community engagement requirement. Only after these steps may the State complete its determination of eligibility and, if appropriate, move the beneficiary into the new eligibility group or applicable section 1115 demonstration.

Section 1902(xx)(3)(A) of the Act provides that anyone described in

section 1902(a)(10)(A)(i)(I) through (VII) of the Act for part or all of a month is deemed to have demonstrated community engagement for that month. At § 435.556(a)(2)(iii), we specify that in the case of a beneficiary who becomes an applicable individual during their eligibility period, the review period is the period between the effective date of such individual's most recent determination or redetermination at renewal, as applicable, and the end of the month prior to the month in which the individual enrolls in coverage in a group or an applicable section 1115 demonstration subject to community engagement. The end date of this review period ensures that the beneficiary's compliance is not assessed for any month for which the beneficiary did not have the entire month to demonstrate community engagement. In assessing compliance within this review period, the State would need to determine whether the beneficiary demonstrated or is deemed to have demonstrated community engagement for the lesser of the number of months the State elects under § 435.556(a)(2) or, consistent with the requirement at § 435.556(b), the number of months in the review period. This means the State will assess compliance with community engagement during a change in circumstances for the same number of months it requires at renewal except in situations when the number of months the State assesses compliance at renewal exceeds the number of months in the review period.

We note that most beneficiaries enrolled on another basis who become applicable individuals when the State acts on a change in circumstances will be deemed to have demonstrated community engagement for all months in the relevant review period because they meet one or more mandatory exceptions (as described in section II.D. of this IFC). There may be limited circumstances in which such deeming is not applicable, depending on the optional groups a State elects to cover and/or the section 1115 demonstrations a State has implemented.

(2) Changes in an Individual's Status as a Specified Excluded Individual

States will also encounter instances in which an individual who was previously determined to be a specified excluded individual loses that status during their eligibility period. The change in status may be identified outside of the regularly scheduled renewal process and could be a beneficiary-reported change in status, a change identified by the State, or an anticipated change, such as when a

parent's dependent child turns age 14, causing the parent to no longer be a specified excluded individual on the basis of being the parent of a dependent child as defined at § 435.554(a). Unless the individual is a specified excluded individual on another basis specified at § 435.554, the individual becomes an applicable individual who is subject to the community engagement requirement.

As with the case of someone previously enrolled in an eligibility group or section 1115 demonstration not subject to community engagement newly becoming an applicable individual, when a State determines that an individual is no longer a specified excluded individual and has become an applicable individual, the State must ensure the individual demonstrates community engagement or is deemed to have demonstrated community engagement during the period specified at § 435.556(a)(2)(iii). In assessing compliance within this review period, a State must consider an applicable individual compliant with the community engagement requirement if they demonstrated or are deemed to have demonstrated community engagement for the lesser of the number of months the State elects under § 435.556(a)(2) or, consistent with the requirement in § 435.556(b), the number of months in the review period.

It is important to note that having been a specified excluded individual is a mandatory exception, as specified at § 435.553(a)(4), that results in the applicable individual being deemed to have demonstrated community engagement in a month for which the applicable individual was a specified excluded individual for all or part of the month. As such, the State must deem an applicable individual to have demonstrated community engagement in all month(s) of the review period in which they were a specified excluded individual. Because of this deeming, in most cases, a person will continue to be eligible for Medicaid at the time they lose their status as a specified excluded individual.

e. Notifying Individuals About Eligibility Decisions and Changes in Eligibility Requirements

States are required to provide all applicants and beneficiaries with "timely and adequate written notice of any decision affecting their eligibility" (§ 435.917(a)), which includes eligibility approvals, denials, and terminations. In the case of eligibility terminations, such notice must be provided at least 10 days in advance of the date of action (§§ 431.201, 431.211). Further, States

must provide individuals with information on their eligibility requirements and rights and responsibilities (§ 435.905). Eligibility determination notices must include a clear statement of the basis of eligibility, consistent with § 435.917(b)(1)(i), or a statement of the State's intended action and the specific reasons for the action, consistent with § 431.210(a) and (b), as applicable.

In the context of eligibility under § 435.119 or a section 1115 demonstration that includes applicable individuals as specified at § 435.556(d), the State must inform applicants and beneficiaries of the State's eligibility determination. The notice must address whether the individual meets the criteria as a specified excluded individual as defined at § 435.554. If the individual does not meet the criteria for a specified excluded individual and is an applicable individual as defined at § 435.551, the notice must also address if the individual demonstrates community engagement under § 435.552, including if the individual meets the criteria for an exception under § 435.553 or, if applicable, § 435.555, to be deemed as demonstrating community engagement, for the month(s) specified under § 435.556(a). Applicants and beneficiaries have the right to request a fair hearing to appeal the State's decision that an individual meets the criteria to be a specified excluded individual and their compliance with the community engagement requirement (including meeting the criteria for an exception), consistent with § 431.220(a)(1).

We also consider the loss of a beneficiary's status as a specified excluded individual and becoming an applicable individual to be an "action" under § 431.201. This change reduces eligibility because it adds new eligibility requirement that the individual must meet to maintain their eligibility. Therefore, the State must provide a beneficiary who is losing their specified excluded individual status with a minimum of 10 days advance notice and fair hearing rights consistent with §§ 435.917 through 435.918 and part 431 subpart E. The advance notice must include the outreach material at § 435.561(c), consistent with § 435.561(b)(3)(iv)(C).

I. Verification of Compliance With and Exceptions and Exclusions From the Community Engagement Requirement

In this section, we discuss requirements and State options we are implementing at new § 435.557 for States to verify: (1) that an applicable individual is compliant with the

community engagement requirement in section 1902(xx)(2) of the Act; (2) that an applicable individual is deemed compliant for a month in which the individual was, for part or all of the month, in a mandatory or optional excepted status described in section 1902(xx)(3) of the Act, and (3) that an individual is a "specified excluded individual" defined in section 1902(xx)(9)(A)(ii) of the Act to whom the community engagement requirement does not apply. We also discuss the requirement in section 1902(xx)(5) of the Act that States conduct *ex parte* verifications by maximizing reliance on electronic data sources when verifying compliance with the community engagement requirement, including deemed compliance, or when determining that an individual is a specified excluded individual. Additionally, we address the circumstances under which States may require individuals to provide documentation or other additional information. In this section, we discuss the data sources that States will be required to use and considerations regarding use of other data sources. We also discuss verification options when there is no data source available to verify an individual's compliance, deemed compliance, or status as a specified excluded individual, or when the data available are not reasonably compatible with information provided by, or on behalf of, an individual.

1. Requirement To Conduct Ex Parte Verification

Section 1902(xx)(5) of the Act, implemented at § 435.557(b), requires States to conduct *ex parte* verification of compliance and deemed compliance with the community engagement requirement, and qualification as a specified excluded individual. In the context of community engagement, *ex parte* verification is not specific to the renewal process but instead refers to the requirement that States first attempt to verify compliance with, or exception or exclusion from, the community engagement requirement using reliable information available to the State, without requiring additional information from an applicant or beneficiary. Specifically, the statute requires that "[f]or purposes of verifying that an applicable individual has met the requirement to demonstrate community engagement under [section 1902(xx)(1)], or determining such individual to be deemed to have demonstrated community engagement under [section 1902(xx)(3)], or that an individual is a specified excluded individual under [section

1902(xx)(9)(A)(ii)], the State shall . . . establish processes and use reliable information available to the State . . . without requiring, where possible, the applicable individual to submit additional information.” The language in the statute neither limits the information the State must attempt to obtain (beyond that it be reliable and available to the State) nor the points in the process when the State must seek these data (for example, the *ex parte* verification requirements are not limited to renewals). Thus, we interpret section 1902(xx)(5) to require that States attempt to verify on an *ex parte* basis that an individual is a specified excluded individual or meets the community engagement requirement (either via compliance or deemed compliance via an exception) every time the State verifies compliance.

We also remind States that, as further discussed in section II.H.1. of this IFC, before assessing compliance, the State must first attempt to confirm that the individual is an applicable individual as defined at § 435.551. This means that the State must first attempt, where possible, to determine whether the applicant or beneficiary is a specified excluded individual defined at § 435.554, because specified excluded individuals are not applicable individuals and are therefore not subject to the community engagement requirement. As such, to the extent possible, the State must first attempt to verify an individual’s specified excluded individual status based on reliable information available to the State and, if the State cannot verify that the individual is a specified excluded individual, proceed to check reliable information available to the State to verify the individual has demonstrated community engagement or was deemed to have demonstrated community engagement based on a mandatory or optional exception (if applicable). However, we recognize that, depending on the State’s procedures for checking reliable information available to the State, the State may practically collect all reliable information available to the State at once. In addition, the State may be able to more quickly obtain reliable information about certain criteria (such as income) than other criteria (for example, regarding an individual’s specified excluded individual status based on medical frailty). In general, we are not requiring States to change their existing procedures for verifying other factors of eligibility not related to community engagement in order to implement the community engagement verification requirements or to

implement a specific hierarchy when checking reliable information available to the State to verify an individual’s specified excluded individual status or compliance or deemed compliance with the community engagement requirement. However, we note that States must make every effort to ensure they do not seek information to verify compliance or deemed compliance with community engagement for a specified excluded individual.

We remind States that in implementing *ex parte* processes for obtaining and using reliable information available to the State for the purposes of verifying community engagement, States must comply with all applicable data sharing and privacy laws. States must also ensure they do not violate the civil rights protections under the ADA, section 504 of the Rehabilitation Act (section 504), section 1557 of the Affordable Care Act (section 1557), or any other applicable Federal or State civil rights laws.

2. Requirement To Use Reliable Information Available to the State

At § 435.557(a), we define reliable information available to the State for the purpose of verifying an individual’s status as a specified excluded individual or an individual’s compliance or deemed compliance with the community engagement requirement. We explain that reliable information available to the State means information necessary for determining eligibility to which the State has access or should have access. This includes information from electronic data sources that the agency has determined effective consistent with § 435.557(b)(1)(ii), and as documented in the agency’s verification plan in accordance with § 435.557(b)(1)(iii); information from other State or local agencies; information related to community engagement from Federal agencies or other data sources provided through the electronic service established by the Secretary (The Federal Data Services Hub, “the Hub”); information in the State’s eligibility system; information in the individual’s case record; payroll data; claims(s) relevant to the individual that have been adjudicated in the preceding 12 months, including those that have been paid, pending or denied (hereinafter referred to as “adjudicated claims”); and encounter data, as relevant to the individual, from the preceding 12 months. States must have a process to obtain the information defined as reliable information available to the State without seeking information from the individual. The process may be automated, such as through an

Application Programming Interface (API) or other electronic interface or could require a worker to manually obtain the information from its source.

We further specify that reliable information available to the State includes information from electronic data sources that States have determined to be effective, consistent with § 435.557(b)(1)(ii), as documented in the State’s verification plan in accordance with § 435.557(b)(1)(iii). Accordingly, wherever possible, States must use existing data sources the State relies upon to verify other eligibility criteria (for example, income data sources) to verify compliance with the community engagement requirement and connect to other data sources (in addition to those specifically enumerated) when doing so is effective, as described in further detail later in this section. We also consider data from other State and local agencies that is needed to determine eligibility to be reliable information available to the State for the purpose of verifying compliance or deemed compliance with the community engagement requirement or that an individual is a specified excluded individual, and, as such, are requiring States to obtain and use information from other State agencies. For example, States must require information from SNAP and TANF agencies and incarceration data from State, county or other local correctional facilities to verify if an individual meets certain specified excluded individual criteria or the mandatory exception for individuals who were inmates of a public institution. To the extent allowable under applicable data sharing and privacy laws, States must also use education information from State colleges or other educational institutions such as community colleges, high school equivalency programs, and high schools, among others, to verify if an individual is meeting the community engagement requirement based on at least half-time enrollment status in an educational program. States must use all available information from other State and local agencies to the extent such information is relevant to verifying compliance or deemed compliance with the community engagement requirement or an individual’s specified excluded individual status and may need to establish connections to these sources or implement manual procedures to access and use the reliable information contained in other State and local agencies’ systems.

We additionally specify that reliable information available to the State includes information from Federal

agencies and other data sources related to community engagement provided through the Federal Data Services Hub (the Hub). As discussed in detail later in this section, we expect to provide States information related to community engagement through the Hub and/or another Federally operated electronic service. Once those data sources are established, States will be required to access that information through the Hub or another Federal service, unless the State has approval to use an alternative mechanism.

In addition, we specify that information in the State's eligibility system and an individual's case record is reliable information available to the State. As described throughout this section, States are required to obtain information that may be relevant to verifying compliance or deemed compliance with the community engagement requirement or status as a specified excluded individual for other purposes, such as verifying other factors of eligibility. For example, States collect information pertaining to pregnancy to determine whether continuous eligibility applies and collect an individual's American Indian status to determine exemptions from cost sharing requirements. When possible, States must use this information collected and stored in an individual's record or other information available in the State's eligibility system to verify an individual demonstrated or was deemed to demonstrate community engagement, or their status a specified excluded individual.

States are also required to use payroll data available to the State, such as payments for caregiver services or other State employee payroll information. Additionally, States must use adjudicated claims data relevant to an individual's medical condition from the last 12 months. Because reimbursement is not provided for all claims submitted for payment, we have included a broader category of adjudicated claims data as reliable information available to the State to also account for pending or denied claims data, in addition to paid claims, from within the last 12 months, so long as the underlying claims data are useful in verifying an exclusion or exception to the community engagement requirement. Additionally, States must use encounter data from the last 12 months as relevant to the individual as a source of reliable information available to the State. Adjudicated claims and encounter data are State Medicaid agency records and are useful verification sources in establishing qualification for certain exceptions to the community engagement requirement

and certain specified exclusions, including medical frailty or otherwise having special medical needs, participation in a drug addiction or alcoholic treatment and rehabilitation program, or other criteria such as hospitalization. Because such adjudicated claims and encounter data are records contained in State Medicaid agency systems, we have determined these data are available to the State, and States are required to access this information, even if this requires system builds or other process enhancements to obtain or translate the data for verifying compliance with or exception or exclusion from the community engagement requirement.

States must also request and use data from other sources that provide reliable information that is relevant to determining eligibility, to the extent that establishing a connection or process to obtain information from the source would be effective. Section 1902(xx)(5) of the Act requires States to use reliable information available to the State without requiring information from an individual, where possible, to verify compliance or deemed compliance with the community engagement requirement or an individual's specified excluded status. As such, to comply with the statutory requirement, States must identify data sources (in addition to those specifically enumerated at § 435.557(a)) that provide reliable information and request and use information from such data sources to the extent that establishing a connection or process to obtain the information would be effective. The regulation at § 435.557(b)(1)(ii) provides that in determining whether connecting to and obtaining and using information from a data source would be effective, the State must consider such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on documentation, and on program integrity in terms of the potential for ineligible individuals to be enrolled and for eligible individuals to be denied coverage. States should exercise reasonable judgment in determining that establishing a data match with a data source would not be effective, considering such factors as the accuracy of the information, the timeliness of the information returned, the complexity of accessing the data or data source, the age of the records, the comprehensiveness of the data, any limitations imposed by the owner of the data on its use, as well as other relevant

factors, including the impact on program integrity.

The regulation at § 435.945(j) requires States to "develop, and update as modified, and submit to the Secretary, upon request, a verification plan describing the verification policies and procedures adopted by the State agency to implement the provisions set forth in §§ 435.940 through 435.956," which relate to the verification of income, assets and citizenship status, amongst other eligibility criteria. At § 435.557(b)(1)(iii), we incorporate this requirement for the purpose of verifying that an individual has met, is deemed to have met, or is excluded from the community engagement requirement. As such, we have updated the MAGI verification plan to include a supplement specific to community engagement. Each State must document in its verification plan supplement the policies and procedures the State will implement to verify compliance or deemed compliance with the community engagement requirement or an individual's specified excluded status. In addition to data sources included in the definition of "reliable information available to the State," States must also document any other data sources the State has determined to be effective (in accordance with factors described at § 435.557(b)(1)(ii)) and will use for community engagement verification as well as when the identified data sources will be used (for example, at application, renewal or both). To effectuate this requirement, we are also making a technical amendment to § 435.945(j) to cross-reference the community engagement verification requirements set forth in § 435.557.

We recognize that State systems evolve over time, and as new data sources become available to verify compliance with the community engagement requirement, or exception or exclusion from it, we may require States to use additional data sources in the future. While this IFC includes the requirement that States obtain and use reliable information available to the State and connect to new data sources that may become available through the Hub within 12 months of the new data source's first availability through that service, subject to the waiver process under § 435.945(k), any other new requirement to connect to additional electronic data sources would be proposed through notice and comment rulemaking.

3. Requesting Additional Information From Applicants and Beneficiaries To Verify Compliance With, and Exceptions and Exclusions From, the Community Engagement Requirement

At § 435.557(b)(2) and (3), we describe the State's obligations when the State is unable to verify an applicant's or beneficiary's compliance or deemed compliance with the community engagement requirement or status as a specified excluded individual using reliable information available to the State. In general, when there is no reliable information available to the State, or the reliable information available to the State is not reasonably compatible with the information provided by or on behalf the individual, the State must seek additional information from the individual to verify compliance or deemed compliance with the community engagement requirement or the individual's status as a specified excluded individual. In this section, we describe the requirements States must implement by January 1, 2028, and the options for States leading up to that date.

Community engagement is an entirely new factor of eligibility, and as such, States must consider criteria that were not previously applicable to Medicaid eligibility and establish new policies and procedures for verifying whether an individual meets those criteria. In addition, there are myriad ways in which an applicant or beneficiary may be excluded from or meet or be deemed to meet the community engagement requirement. Thus, States do not need to establish policies and procedures for verifying one piece of information as is the case for some other factors of eligibility (for example, income), but rather for all the ways in which an individual may qualify as a specified excluded individual, demonstrate community engagement, or be deemed to demonstrate community engagement, most of which do not currently exist in the context of Medicaid eligibility. As such, we have detailed sources of reliable information available to the State that States must use in verifying compliance or deemed compliance with the community engagement requirement or an individual's specified excluded individual status. However, we recognize there will be instances in which there is no reliable information available to the State. We anticipate that, for the new community engagement criteria, there will generally be documentation reasonably available for individuals to verify their compliance or deemed compliance or

status as a specified excluded individual. Examples of reasonably available documentation include paystubs to verify work hours or income, a document from a community service organization that demonstrates the number of hours an individual volunteered, transcripts or class schedules as proof of half-time enrollment in an educational program, a document from VA showing disability status and approval notices from SNAP or TANF, to name a few. Accordingly, we expect that seeking documentation to verify eligibility generally should impose minimal burden while also furthering our goal of ensuring only eligible individuals are determined eligible and/or remain enrolled.

Thus, beginning on January 1, 2028, when there is no reliable information available to the State, or the reliable information available to the State is not reasonably compatible with the information provided by or on behalf of the individual, the State must generally require documentation to verify that an individual demonstrated community engagement, is deemed to have demonstrated community engagement, or is a specified excluded individual, if such documentation is reasonably available. We implement this requirement at § 435.557(b)(2)(ii). However, there will be circumstances in which no documentation exists, or documentation is not reasonably available. For example, an individual who lives with and provides regular assistance to their disabled parents may qualify for an exclusion on the basis of being a family caregiver. Because of the personal nature of this type of assistance, it often occurs outside of an employer/employee or other contractual relationship. As such, an individual is unlikely to have documentation to provide that demonstrates qualification for the exclusion. Individuals may also experience exceptional circumstances that prevent them from accessing or result in the loss of documentation, such as a housefire or flood.

States may not deny or terminate eligibility based on reliable information available to the State without first providing the individual with the opportunity to dispute the information available to the State and furnish information to verify their eligibility. Thus, as implemented at § 435.557(b)(2)(iii), States must accept other information when no documentation is reasonably available to verify that an individual demonstrated community engagement, is deemed to have demonstrated community engagement or is a specified excluded individual. States must

determine what information is considered sufficient to verify a given activity or other basis for demonstrating community engagement or exception or exclusion when such cannot be verified using reliable information available to the State and documentation is not reasonably available. States should document their policies regarding what documentation is required and what information is sufficient in the absence of reasonably available documentation in policy manuals, standard operating procedures, or other relevant documents internal to the State for training and audit purposes.

While most States require documentation for other factors of eligibility when there is no reliable information available to the State or the information is not reasonably compatible with the information provided by or on behalf of the individual, we recognize that some States may need to make system and process changes to implement these documentation requirements for community engagement. Accordingly, as provided in § 435.557(b)(2)(i), States may require documentation or accept other information (even if documentation is reasonably available) to verify an individual's compliance or deemed compliance with the community engagement requirement or status as a specified excluded individual through December 31, 2027.

Finally, there are two exceptions to the policies described in this section. The first exception applies to verifying an individual's specified excluded individual status on the basis of being medically frail or otherwise having special medical needs and the second exception applies to mandatory exceptions. Refer to section II.I.7.e. of this IFC for further information about verifying medical frailty and section II.I.8. of this IFC for further information about verifying mandatory exceptions.

a. Requirement To Accept Information From Applicants and Beneficiaries

The regulation at § 435.557(b)(3) specifies that the State must comply with the requirements at §§ 435.558 and 435.952(d) and provide individuals the opportunity to furnish information and documentation required to verify that the individual has demonstrated community engagement or is deemed to have demonstrated community engagement for a required month, or is a specified excluded individual, before terminating or denying eligibility based on reliable information available to the State. We also provide at § 435.557(b)(4) that the State must allow the individual, an adult who is in the individual's

household, as defined in § 435.603(f), or family, as defined in section 36B(d)(1) of the Code, an authorized representative, or, if the individual is incapacitated, someone acting responsibly for the individual to submit any required information using any of the modalities through which States are required to accept applications, including online, by phone, by mail, in person, or via other commonly available electronic means, in accordance with § 435.907(a).

4. Verifying Community Engagement at Application, Renewal and More Frequent Verifications

At § 435.557(c), we implement the requirement that the State verify an applicable individual has demonstrated or is to be deemed to have demonstrated community engagement for the period specified at § 435.556(a) and described in section II.H. of this IFC. The State must first attempt to complete the verification on an *ex parte* basis and, as described at § 435.557(c)(1), may not limit the reliable information available to the State that is checked to specific activities or other means of demonstrating community engagement or being deemed to have demonstrated community engagement, or to specific excluded statuses. As specified at § 435.557(c)(1)(i), the State must attempt to verify an individual's specified excluded individual status or that the individual demonstrated or was deemed to have demonstrated community engagement using all reliable information available to the State for all relevant months and may only request additional information or initiate noncompliance procedures under § 435.558 if, after reviewing the reliable information available to the State, the State lacks sufficient information to confirm that the individual is a specified excluded individual or that the applicable individual demonstrated or was deemed to have demonstrated community engagement based on a mandatory or optional exception (if applicable) for the required number of months during the review period.

As an example, consider an enrolled, applicable individual who demonstrated community engagement at application on the basis of working 80 hours per month. At renewal, after confirming the individual is not a specified excluded individual, the State checks the data sources relied upon to verify work hours but does not locate information in the data sources sufficient to verify continued compliance on this basis. Before requesting information from the individual, the State must also check

available information to determine if the individual meets an exception under §§ 435.553 or 435.555, if applicable, and to verify whether the individual met the community engagement requirement in another way provided at § 435.552 (for example, participation in an educational program, participation in a work program, community service, or income sufficient to meet the standard at § 435.552(a)(6) or (7)). Only after completing these steps, if still unable to verify that the individual has demonstrated community engagement, is deemed to have demonstrated community engagement, or is a specified excluded individual, may the State send the renewal form to request information from the individual or initiate the noncompliance process concurrently with the renewal form, consistent with § 435.558(b).

We note that, as provided at § 435.557(c)(1)(ii), the State is not generally required to check additional sources of reliable information available to the State after the State verifies compliance, deemed compliance, or that the individual is a specified excluded individual. For example, if the State confirms an applicable individual has a monthly income equal to the Federal minimum wage multiplied by 80 hours for the required number of months in the review period, the State does not need to check any additional reliable information available to the State to verify other qualifying activities or exceptions, because the State has already confirmed the individual demonstrated community engagement. The only exception is when the State has information (for example, information provided on the application) indicating the individual may also qualify for an exclusion. As implemented at § 435.557(c)(2), the State must always determine an individual to be a specified excluded individual when the State has sufficient information to make such determination. This requirement stems from the fact that specified excluded individuals are not applicable individuals and therefore not required to demonstrate community engagement as a condition of eligibility. Thus, as described throughout this IFC, States must confirm an individual is subject to the community engagement requirement prior to assessing their compliance. As a result, the exclusion takes precedence even if the State has also verified an individual demonstrates community engagement or meets the criteria for an exception.

However, we recognize that in some cases, it may appear that an individual could qualify for an exclusion, but the

State may need more information to verify the individual's specified excluded individual status. If the State has enough information to determine that the individual demonstrates compliance or meets the criteria for an exception without requesting additional information, the State may not delay the individual's enrollment solely to complete the verification of the individual's qualification for the exclusion. As implemented at § 435.557(c)(3), the State must enroll the individual promptly based on the information available (for example, income verifying compliance), provided all other eligibility criteria are satisfied, and then proceed to verify post-enrollment whether the individual meets the criteria for the exclusion (for example, an exclusion based on the individual's status as a veteran with a total disability rating) consistent with the requirements at § 435.557(b)(2).

We also encourage States to design their process in such a manner to reduce administrative burden. States should consider prioritizing categories under which an individual may be excluded or, in the case of applicable individuals, excepted for a longer period of time over those that require more frequent verification based on the State's verification policies. For example, if an individual qualifies for an exclusion on the basis of being an American Indian as well as being a parent to a dependent child 13 years of age or under, we encourage the State to apply the exclusion based on their American Indian status because American Indian status is not subject to change and therefore does not need to be reverified. In developing their process, States may also wish to consider factors such as the availability of reliable information and reasonably available documentation in the absence of reliable information available to the State, as well as how the number of months for which an individual must demonstrate or be deemed to demonstrate community engagement and the State's election with respect to conducting more frequent verifications may impact the level of administrative burden.

a. Verifying Community Engagement Information Provided on an Application, Renewal Form, or Reported Between Regular Renewals

States must include questions on their applications and renewal and other supplemental forms allowing applicants and beneficiaries an opportunity to provide information demonstrating compliance with the community engagement requirement, deemed compliance, and status as a specified

excluded individual. When States receive this information at application, renewal, or based on a reported change between regular renewals, States must begin the verification process by checking the reliable information available to the State, including information obtained electronically, to verify the information. If there is no reliable information available to the State, or the information provided by or on behalf of the individual is not reasonably compatible with reliable information available to the State, the State must seek additional information from the individual, in accordance with § 435.557(b)(2), or other additional information relevant to verifying compliance or deemed compliance with the community engagement requirement or an individual's specified excluded status that cannot be verified using reliable information available to the State. As specified at § 435.557(c)(1)(i)(B), an individual must not be required to provide documentation or other additional information unless information needed by the agency could not be verified using reliable information available to the State, including when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual.

b. Verifying Community Engagement When Conducting More Frequent Verifications Between Regularly Scheduled Redeterminations

Importantly, States that elect to verify compliance between regular renewals as provided at § 435.557(d) must comply with all *ex parte* verification requirements under section 1902(xx)(5) of the Act, as implemented in this IFC. As specified at § 435.557(d)(1), States that elect this option may not conduct a more limited verification between renewals but must instead comply with all the requirements described in this section. In accordance with § 435.557(d)(2), the State must first check all reliable information available to the State to confirm the individual is not a specified excluded individual. After verifying the individual is not excluded, § 435.557(d)(3) requires that the State must attempt to verify that the individual demonstrated community engagement or was deemed to have demonstrated community engagement using all reliable information available to the State for all relevant months before requesting initiating noncompliance procedures. In other words, the agency must attempt to verify compliance or deemed

compliance in the same manner that it would when verifying eligibility at application or renewal, regardless of the basis on which the individual was determined to be in compliance with the community engagement requirement at enrollment or the last verification, before requesting information from the individual or initiating noncompliance procedures in accordance with § 435.558. We also stress that, while the State must confirm whether an individual is a specified excluded individual as part of the more frequent verification process, more frequent verifications are specific to applicable individuals. Thus, consistent with § 435.557(d)(4), individuals identified as specified excluded individuals during their most recent verification are not subject to more frequent verifications, unless the State has information indicating the individual is no longer a specified excluded individual, or that the individual may be losing their status as a specified excluded individual due to an anticipated change, such as turning age 19, as further discussed in section II.H.d.2. of this IFC.

When a State cannot verify that an applicable individual has demonstrated or is deemed to have demonstrated community engagement for a required month using reliable information available to the State, the State must comply with the requirements at § 435.557(b)(2) and seek additional information from the individual to verify their continued eligibility.

5. The Federal Data Services Hub or Other Electronic Service

The Federal Data Services Hub, operated by CMS, is an electronic service through which States can access a number of data sources for use in verifying Medicaid eligibility. Existing regulations in § 435.949 require that to the extent that information related to eligibility for Medicaid is available through the Hub, States must access the information through that service to obtain information from Federal agencies and other data sources, including the SSA, the Department of the Treasury, and the Department of Homeland Security, except as provided in § 435.945(k). We expect to establish connections to additional data sources and provide States information through the Hub and/or another Federally operated electronic service to verify certain factors that could impact whether someone is subject to the community engagement requirement, and if so, whether they demonstrate or are deemed to have demonstrated community engagement, including additional sources related to qualifying

activities under § 435.552, mandatory exceptions under § 435.553, optional short-term hardship exceptions under § 435.555, and specified excluded individual criteria under § 435.554. Examples of these additional data sources include the National Student Clearinghouse and the VA. We are also establishing other Federal services, such as the Eligibility Made Easy (Emmy) tool, through which States can access information specific to community engagement. Once those data sources are established and reliable information relevant to verifying compliance with the community engagement requirement becomes available through the Hub, § 435.557(e) requires States to access the data available via connection to the Hub as soon as practicable, but no later than 12 months after their initial availability through the Hub. We are also establishing other Federal services, such as the Eligibility Made Easy (Emmy) tool, through which States can access information specific to community engagement.

A State may obtain approval under § 435.945(k) to establish a direct connection to access information available through the Hub through an alternative source or mechanism as soon as practicable, but no later than 12 months after the information relevant to verifying compliance with the community engagement requirement becomes available through the Hub. The 12-month period allows States time for planning and implementation, including the system development and changes States will need to make for their eligibility systems to ingest and use information from newly available electronic data sources. Section 435.557(e)(1) provides that we may determine a Hub waiver as described at § 435.945(k) is not required if the State establishes a connection to access information available through the Hub from certain alternative Federal electronic services, such as the Emmy API, should such services become available, that provide reliable and relevant information. We would make such a determination that a waiver is not required in circumstances where it is likely that a direct connection to or alternative mechanism for accessing information from the new data source would be likely to satisfy the criteria in § 435.945(k).

6. Verifying Compliance With Community Engagement Activities

As implemented at § 435.552 and discussed in detail in section II.C. of this IFC, applicable individuals subject to the community engagement requirement can meet the requirement

through engaging in a minimum of 80 hours per month of work, community service, or participation in a work program; being enrolled in an educational program at least half-time; or a combination thereof. Individuals also can demonstrate community engagement by having a monthly income that is not less than the applicable Federal minimum wage multiplied by 80 hours. Seasonal workers may demonstrate community engagement by having an average monthly income over the preceding 6 months that is not less than the applicable Federal minimum wage multiplied by 80 hours.

Section 1902(xx)(1)(A) of the Act and implementing regulations at § 435.556 provide that States must require applicable individuals who are applying for Medicaid to demonstrate that they meet the community engagement requirement for the 1 month (or, at State option, the 2 or 3 consecutive months) preceding the month of application. Section 1902(xx)(1)(B)(i) of the Act provides that States must require applicable individuals who are enrolled beneficiaries to demonstrate that they meet the community engagement requirement for 1 or, at State option, more months between the individual's most recent eligibility determination and their next renewal. Where demonstrating community engagement for more than 1 month is required, the State may not require that the months be consecutive under section 1902(xx)(1)(B) of the Act (for example, a State that requires 2 months may not require that those 2 months be consecutive). See section II.H. of this IFC for more information about assessing compliance.

Section 1902(xx)(4) of the Act provides States with the option to verify compliance with the community engagement requirement between an applicable individual's regular renewals. States that elect this option have the option to determine the frequency with which to verify compliance. In States that elect to conduct more frequent verification of compliance with the community engagement requirement, under section 1902(xx)(1)(B)(ii) of the Act, the State must verify that applicable individuals met the community engagement requirement for 1 or more months (at State option), whether or not consecutive, between the most recent verification of compliance and the current verification. As described in section II.H.1. of this IFC, prior to verifying compliance with the community engagement requirement, the State must first confirm the

individual is an applicable individual subject to the community engagement requirement and not a specified excluded individual.

We remind States that effective January 1, 2027, most of the population required to demonstrate community engagement is also subject to a new 6-month renewal requirement for the adult group under section 1902(e)(14)(L) of the Act. The 6-month renewal requirement does not apply to American Indians or to individuals enrolled in section 1115 demonstrations (except for those that cover certain adults eligible under a section 1115 demonstration that provides MEC to all individuals who would be eligible if the State provided coverage to the adult group under the State plan); for these individuals, eligibility must be renewed every 12 months. States are advised to consider the more frequent renewal requirement when determining whether to verify community engagement compliance between renewals (in general, that is, more frequently than every 6 months) and when determining the number of months for which an applicable individual must demonstrate compliance between verifications. Specifically, if electing more frequent verification, States may wish to consider the timing of the renewal process, particularly how far in advance the State initiates the renewals in relation to the end of the eligibility period, and the State's ability to access timely data to verify compliance and otherwise renew eligibility when determining the verification frequency and number of months.

Later in this section, we discuss verification requirements and options for verifying that an individual has demonstrated or is deemed as having demonstrated community engagement for the required month(s) at application, renewal, or between renewals (if applicable). As noted in section II.I.1. of this IFC, under section 1902(xx)(5) of the Act and § 435.557(b), States must first attempt to verify that applicable individuals who are applicants or beneficiaries have met the community engagement requirement using reliable information available to the State before requesting additional information from the individual, in accordance with requirements at § 435.557(b)(2), or initiating noncompliance procedures as discussed in section II.J.2. of this IFC and implemented at § 435.558. States may request documentation or additional information only if there is no reliable information available to the State to verify compliance or the reliable information is not reasonably

compatible with information provided by or on behalf of the individual.

a. Verifying Hours of Work

As further discussed in section II.C. of this IFC, and specified in section 1902(xx)(2)(A) of the Act and § 435.552(a)(1), an applicable individual demonstrates community engagement for a month if the individual works for not less than 80 hours in that month, which includes work in exchange for money, work in exchange for goods or services ("in-kind" work), unpaid work other than community service, and any combination of the three. Under the requirement in section 1902(xx)(5) of the Act, States must attempt to verify community engagement compliance on an *ex parte* basis. To comply with this requirement, States must, at a minimum, attempt to verify compliance using the reliable information available to the State that the State relies upon to verify income to the extent these data sources provide information about hours worked. However, not all types of work can be verified using currently available financial data sources and, in some instances, the data returned may not include information regarding the number of hours worked. As such, States should also consider whether there are other available data sources that provide information pertaining to hours worked, including paid, unpaid, or in-kind hours and, if so, establish a connection with said data source(s) (unless doing so is not effective) in accordance with § 435.557(b)(1).

As explained in section II.C.8. of this IFC, if the monthly income is less than the applicable Federal minimum wage multiplied by 80 hours and the State does not have information regarding the number of hours worked, States have the option to apply an equivalency standard that allows the State to calculate the number of work hours for a month by dividing the individual's monthly income by the Federal minimum wage. For example, where the State is not able to verify that the applicable individual worked for at least 80 hours during the relevant month or had monthly income equivalent to working at least that number of hours for the month, the State may derive the number of hours worked from the monthly income and use the calculated estimate to combine with other qualifying hours to demonstrate community engagement under section 1902(xx)(2)(E) of the Act and § 435.552(e). We recognize that States will be using the individual's MAGI-based income for their MAGI-based household when converting monthly income to hours worked. In these

circumstances, the State must use a reasonable method to allocate hours between members of the household. In addition, this option must only be used when the monthly income is less than the applicable Federal minimum wage multiplied by 80 hours and the State does not have information regarding the number of hours worked by an applicable individual.

If the State cannot verify work hours using reliable information available to the State (including, at State option, using the equivalency standard described in the preceding paragraph) or the reliable information available to the State is not reasonably compatible with the information provided by an applicable individual, the State must seek information from the individual to verify work hours. Beginning on January 1, 2028, when States are unable to verify work hours using reliable information available to the State, States must require documentation when such documentation is reasonably available, and must establish a process to accept other information when there is no reasonably available documentation, as described in section II.I.3. of this IFC.

(1) Verifying Hours for Certain Caregivers

States will also need to consider how to verify hours for certain caregivers who provide assistance to a dependent child or disabled individual. (Please refer to § 435.554(a) and sections II.E.3.e. and f. of this IFC for the definitions of dependent child and disabled individual for the purpose of community engagement.) Consistent with section 1902(xx)(9)(A)(ii)(III) of the Act, as implemented at § 435.554(c)(3), a family caregiver as defined at § 435.554(a) is a specified excluded individual if he or she meets one of the following implementing criteria established at § 435.554(c)(3)(i)(A) through (C): (1) the individual primarily resides with a dependent child or disabled individual for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, (2) the individual is a relative (as specified in the “caretaker relative” definition at § 435.554(a), without regard to the requirements to live with or to assume primary responsibility) of a dependent child or disabled individual for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, or (3) the individual does not reside with and is not a relative (as specified in the “caretaker relative” definition at § 435.554(a), without regard to the requirements to live with and to assume primary responsibility) of a dependent

child or disabled individual for whom he or she provides not less than 80 hours of assistance that is not solely incidental in nature per month. This means that States must verify the number of hours of care provided if the family caregiver does not reside with and is not related to the dependent child or disabled individual for whom he or she provides assistance to determine whether that individual is a specified excluded individual under the family caregiver component of section 1902(xx)(9)(A)(ii)(III) of the Act.

If the family caregiver does not live with and is not related to the dependent child or the disabled individual for whom he or she provides assistance, and provides less than 80 hours of care per month, the family caregiver does not meet the criteria for the exclusion and must demonstrate or be deemed to demonstrate community engagement (provided they are not a specified excluded individual on another basis). However, the hours of assistance by such an individual would count as unpaid work under § 435.552(b) and the individual would only need to engage in additional activities sufficient to reach the 80-hour threshold to demonstrate community engagement, as permitted under § 435.552(a)(5). For example, if the family caregiver provides 55 hours per month of assistance to a non-relative whom he or she does not live with, those 55 hours would count towards compliance with the community engagement requirement, and the caregiver would need 25 additional hours of engagement in the activities listed at § 435.552(a)(1) through (4), including but not limited to other paid, unpaid, or in-kind work, to demonstrate community engagement. The applicable individual could also demonstrate community engagement on the basis of income, as specified at § 435.552(a)(6) and (7). See section II.I.6.e. of this IFC and § 435.552(e) for further details about the requirement to aggregate hours of engagement in different qualifying activities.

Where possible, States must use reliable information available to the State to verify hours of assistance provided by a family caregiver. (See section II.I.7.c. of this IFC for more discussion about using reliable information available to the State to verify an individual’s status as a specified excluded individual under the family caregiver component of the exclusion at section 1902(xx)(9)(A)(ii)(III) of the Act.) However, we recognize that caregiving of this nature is unique and unlikely to be reflected in reliable information available to the State. In the absence of

reliable information available to the State, the State must seek information from the individual to verify caregiving hours, including the number of hours of assistance provided by a family caregiver and any other information needed to substantiate the State’s determination regarding the individual’s status as a family caregiver, status as a specified excluded individual under the family caregiver exclusion, or number of caregiving hours counted as work. Beginning on January 1, 2028, when States are unable to verify family caregiver status or hours using reliable information available to the State, or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, States must require documentation if documentation is reasonably available. In the absence of reasonably available documentation, the State must accept other information that is sufficient to verify eligibility, as described in section II.I.3. of this IFC.

b. Verifying Community Service

An applicable individual may also demonstrate community engagement by completing not less than 80 hours of community service through a structured program that is completed for the direct benefit of the community under the auspices of a public or nonprofit organization in a month, consistent with section 1902(xx)(2)(B) of the Act and § 435.552(a)(2) and (b). In addition, section II.C.2. of this IFC explains that, because community service needs vary by State and locality, the types of activities considered qualifying community service may also differ between States. As such, we believe States are in the best position to identify sources of reliable information available to the State that will be effective in verifying community service hours. Where possible, we recommend that States work with organizations through which an individual may participate in qualifying community service to establish data exchanges that will assist with this verification.

We also understand that there will be many instances in which there is no reliable information available to the State, and developing a process to exchange or obtain information electronically from potential data sources would be ineffective or infeasible. In the absence of reliable information available to the State, or when the reliable information available to the State is not reasonably compatible with the information provided by or on behalf of an applicable individual, the State must have procedures in place to verify hours of community service in an

auditable manner (that is, a manner that yields records that can be produced for audit or other review purposes). States must ensure the individual's case record contains sufficient information (including documentation when applicable) to support the State's determination of eligibility, including with respect to community engagement. For the purpose of verifying community service hours, examples of the information that would support a determination may include documentation containing details about the general nature of the program; the dates and hours of community service completed; a description of the community service activity; the organization's name and address; and the name and contact information (such as phone number and/or email address) of a point of contact at the organization who can confirm the hours completed. As described in section II.I.3. of this IFC, beginning on January 1, 2028, the State must require documentation if documentation is reasonably available when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual. If documentation demonstrating participation in community service is not reasonably available, the State must have a process to accept other information sufficient (as determined by the State) to verify community service participation.

c. Verifying Participation in a Work Program

In addition, as specified in section 1902(xx)(2)(C) of the Act, an applicable individual may demonstrate community engagement for a month by participating in a work program for at least 80 hours in such month, which we implement at § 435.552(a)(3). The definition of work program as defined at § 435.552(b) includes different types of work programs, as discussed in section II.C.3. of this IFC; thus, the specific qualifying work programs available to applicable individuals will vary by State. Because of this variance, we believe States are best positioned to identify available sources of reliable information about work program participation. However, we note that section 1902(xx)(9)(D) specifies that "work program" has the same meaning given to such term in section 6(o)(1) of the Food and Nutrition Act of 2008 and therefore aligns with SNAP work program requirements. We encourage State Medicaid agencies to consult the SNAP program in their State to identify any data sources SNAP relies on to verify participation in a work

program and leverage those data sources where possible. For instances in which the State is unable to verify 80 hours of participation in a work program using reliable information available to the State, the State must seek information from the individual to verify hours that the individual participated in a work program. Beginning on January 1, 2028, if States are unable to verify 80 hours of participation in a work program using reliable information available to the State, States must require documentation when such documentation is reasonably available and must establish a process to accept other information when documentation is not reasonably available, as described in section II.I.3. of this IFC. States must also ensure the procedures implemented to verify work program participation hours produce an auditable record supporting the State's eligibility determination.

d. Verifying Enrollment in an Educational Program

As detailed in sections II.C.4. and II.C.5. of this IFC and specified in section 1902(xx)(2)(D) of the Act and § 435.552(a)(4), (b), and (c), an applicable individual demonstrates community engagement if the individual is enrolled in an educational program at least half-time, as determined by the school or institution. States may consider establishing data exchanges with their State university system and/or other educational settings, and/or they may purchase data from a third-party entity such as the National Student Clearinghouse, provided the State complies with all applicable privacy and data sharing laws. We are exploring options to make educational data available through the Hub. When such data become available through the Hub, States will need to access that information through the relevant service in accordance with §§ 435.949 and 435.557(e), except as provided at §§ 435.945(k) and 435.557(e)(1) and (2) (for example, if the State wishes to establish a direct connection with the National Student Clearinghouse or other data source provided through the Hub, or use an alternate data source or mechanism to obtain educational program participation information). As with the other activities discussed in this section, States must also identify and establish connections to other sources of reliable information to verify educational status and request and use information from those sources, unless doing so would not be effective, as provided at § 435.557(b)(1)(ii). The identification of additional sources of reliable

information is particularly important for educational programs that might not be reflected in the National Student Clearinghouse data, such as community colleges, high school equivalency programs, high schools, and technical or vocational schools.

Additionally, as further discussed in section II.C.7. of this IFC, an applicable individual may satisfy the community engagement requirement using hours from a combination of activities. Accordingly, States must have procedures to calculate the number of hours an applicable individual who is enrolled for less than half-time participates in an educational program, as specified at § 435.552(d). If the State does not have a data source that provides credit hours or participation hours for students enrolled for less than half-time, the State must seek information from the individual to determine the number of hours the individual participated in the educational program based on the number of credit or instruction hours. As discussed in section II.C.6. of this IFC, we are using the Carnegie Unit standard to calculate the time spent in an educational program for a 1-month period. This means that 1 credit hour equals 1 hour of instruction plus 2 hours of out-of-class work per week. Thus, using this methodology, 1 credit hour equates to 3 hours of student work for the week. The total number of hours for a given month is calculated by multiplying the number of credit hours by 3 to provide the weekly hours spent in the educational activity and then multiplying this number by 4.33 to determine the monthly hours (see section II.C.6. of this IFC for an example of this calculation). For educational programs that do not use credit hours, if an individual is enrolled less than half-time as defined by the school or institution, then the hours spent attending class and participating in educational activities will count towards meeting the requirement. See section II.C.6. of this IFC for further information about calculating hours of participation in an educational program for individuals enrolled less than half-time.

States must attempt to verify an applicable individual's half-time enrollment status or, if the individual is enrolled less than half-time, the number of hours or participation in an education program, using reliable information available to the State. If there is no reliable information available to the State, or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must seek

information from the individual to verify compliance. Beginning on January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must require documentation to verify half-time enrollment status or educational hours if documentation is reasonably available. In the absence of reasonably available documentation, the State must comply with the requirement at § 435.557(b)(2)(iii) to accept information other than documentation.

e. Verifying Compliance Using a Combination of Activities

In accordance with section 1902(xx)(2)(E) of the Act, implemented at § 435.552(a)(5), an applicable individual may demonstrate compliance by completing a combination of work, community service, participation in a work program, or participation in an educational program. To verify compliance using a combination of activities, States must verify hours for each activity separately, as described in sections II.C.1. through II.C.3. and II.C.6. of this IFC, and then add the number of hours for each of the four activities to calculate the total number of qualifying community engagement hours for the month.

As noted in section II.C.6. of this IFC, States may have to calculate the number of hours an applicable individual who is enrolled less than half-time participated in an educational program by multiplying each credit hour by three to get the weekly total and then multiplying the weekly total by 4.33 for the monthly total. In addition, as discussed in section II.C.8. and II.I.6.a. of this IFC, when the monthly income is less than the applicable Federal minimum wage multiplied by 80 hours and the State does not have information regarding the number of hours worked, States may divide the verified monthly income by the Federal minimum wage to determine the number of work hours. For example, if the State verifies an individual has \$380 in monthly income, the State may divide the monthly income by the current Federal minimum wage of \$7.25 and credit the individual with having worked 52 hours for the month (\$380 divided by \$7.25). We also remind States that some individuals who meet the definition of a family caregiver will not qualify as a specified excluded individual under the family caregiver component of section 1902(xx)(9)(A)(ii)(III) of the Act, because they are not related to and do not live with the individual for whom they

provide assistance, and they provide such assistance for fewer than 80 hours per month. States must ensure any hours of assistance provided by these applicable individuals are accounted for in the individual's monthly work hour total prior to combining those hours with all hours of other qualifying activities. See section II.I.6.a. of this IFC for more information about calculating work hours for family caregivers who do not qualify as specified excluded individuals.

After determining the number of hours an individual spent engaging in work, community service, a work program, and/or an educational program in a given month, the State must have procedures in place to aggregate those hours and must not request that the applicable individual provide documentation or other information when the sum of the hours of qualifying activities as reflected in reliable information available to the State is sufficient to verify the individual demonstrated community engagement for the relevant month. The State must also make sure that, when additional information is required for one or more categories of qualifying activity hours, the State considers the total number of hours across these activities, as reflected in the reliable information available to the State combined with the hours verified by documentation or other information provided by the applicable individual.

For example, an individual reports on their application that they worked and volunteered for 40 hours each in the prior month, for a total of 80 qualifying hours. The State verifies the individual worked for 40 hours in prior month using reliable information available to the State but needs more information to verify the community service hours. The State sends a request for information seeking documentation regarding the individual's participation in community service. In response, the individual submits documents that demonstrate the individual completed 42 hours of community service in the prior month. The State must combine the 40 hours of work that was verified using the reliable information available to the State with the 42 hours of community service reflected in the documentation for a total of 82 qualifying hours and determine the individual demonstrated community engagement in that month.

f. Verifying Compliance Based on Monthly Income

The statute provides two additional pathways for an individual to demonstrate community engagement: (1) Section 1902(xx)(2)(F) of the Act

specifies that an applicable individual demonstrates community engagement if they have a monthly income that is not less than the applicable Federal minimum wage requirement under section 6 of the FLSA multiplied by 80 hours, and (2) Section 1902(xx)(2)(G) of the Act specifies that a seasonal worker described in section 45R(d)(5)(B) of the Code demonstrates community engagement if they have an average monthly income over the preceding 6 months that is not less than the applicable Federal minimum wage requirement multiplied by 80 hours. See section II.C.8. of this IFC for further details about who qualifies as a seasonal worker.

As described in section II.C.8. of this IFC and implemented at § 435.552(f), the determination of "monthly income" for the purpose of demonstrating community engagement refers to the same MAGI-based methodologies used for financial eligibility under § 435.603. States generally do not need to establish separate data sources to verify that an applicable individual demonstrated community engagement based on their monthly income or average monthly income. Rather, to verify community engagement on this basis, States should use the same data sources they use to verify financial eligibility. We note that, for seasonal workers, an average income for the preceding 6 months must be calculated for each month in which an applicable individual is required to demonstrate community engagement, if the State does not elect to use a reasonable predictable changes methodology. Please see section II.C.8. of this IFC for more information about averaging income for seasonal workers, including an example of how the 6-month average is constructed for a given month of the review period.

For a State that has elected a reasonably predictable changes methodology as part of its MAGI-based methodologies (as discussed earlier in section II.C.8. of this IFC), we expect the monthly income in each of the preceding 6 months to be relatively stable because the income determination will have considered a prorated portion of the household's fluctuating income.

7. Verifying Status as a Specified Excluded Individual

Specified excluded individuals, defined in Section 1902(xx)(9)(A)(ii) of the Act and implemented at § 435.554, are carved out from the definition of an applicable individual, as defined in section 1902(xx)(9)(A)(i) of the Act and implemented at § 435.551. As such, specified excluded individuals are not

subject to the requirement to demonstrate community engagement. Consistent with section 1902(xx)(5) of the Act, States must establish processes and use reliable information available to the State without requiring, where possible, additional information to verify that an individual meets the definition of a specified excluded individual at application and renewal. We note that, because specified excluded individuals are not applicable individuals, the requirement in section 1902(xx)(1) of the Act to verify an applicable individual met the requirement in the 1 or more months prior to the month of application, or 1 or more months during the review period assessed at the regular renewal or when redetermining eligibility based on a change in circumstances, does not apply to specified excluded individuals. In other words, there is no requirement that an individual who is a specified excluded individual meet that definition for the required number of months during the review period (as defined in section II.H. of this IFC). Rather, as is discussed in greater detail in this section, States will verify if an individual meets the definition of a specified excluded individual at the time of application or renewal or if the State receives information indicating a change in circumstances for the individual that may affect eligibility, similar to when States verify other factors of eligibility (for example, income).

In addition, the option in section 1902(xx)(4) of the Act to verify applicable individuals' compliance with the community engagement requirement more frequently than at each regular renewal does not apply to specified excluded individuals. Thus, States may not reverify a specified excluded individual's status as such between regular scheduled renewals as part of the more frequent verification process (if elected by the State), unless the State has information indicating the individual's status has changed. However, we remind States that when assessing compliance, including when conducting a more frequent verification, the State must first confirm the individual is an applicable individual and is not a specified excluded individual using reliable information available to the State. In other words, when conducting more frequent verifications, the State must not conduct a more frequent verification for a specified excluded individual but must begin the verification process by confirming that beneficiaries who have

been applicable individuals have not become specified excluded individuals.

Section 1902(xx)(9)(A)(ii) of the Act identifies nine categories of specified excluded individuals: individuals who are described in section 1902(a)(10)(A)(i)(IX) of the Act (the FFCC group); certain American Indians; parents, guardians, caretaker relatives, or family caregivers of a dependent child or a disabled individual; veterans with a permanent or temporary total disability; individuals who are medically frail or otherwise have special medical needs (as defined by the Secretary); individuals who are compliant with TANF work requirements and individuals who are members of a household that receives SNAP benefits and must comply with SNAP work requirements; individuals who are participating in a drug addiction or alcoholic treatment and rehabilitation program; inmates of a public institution; and individuals who are pregnant or entitled to postpartum medical assistance under section 1902(e)(5) or (16) of the Act. See section II.E. of this IFC and the implementing regulations at § 435.554 for additional discussion of the definition of specified excluded individuals. The verification process a State implements when verifying if an individual is a specified excluded individual will depend on the reliable information available to the State. We note that in some instances, the process will differ at application and renewal based on available data and that there will likely be some categories of specified excluded individuals for which there is no reliable information available to the State for verification.

For many of the categories of specified excluded individuals, States may have information available to verify the status; for example, from the State's own records, claims, payment, and encounter data to verify medical frailty or participation in a drug addiction or alcoholic treatment and rehabilitation program. States may also have information from the records of another Federal, State, or local agency, that can be used, for example, to verify veteran disability status, that an individual is meeting TANF work requirements, or that an individual is or recently was in a county carceral facility. Additionally, for certain categories of specified excluded individuals, information needed to verify the individual's status may already have been verified as part of determining other factors of eligibility in Medicaid; therefore, no additional verification would be needed, such as for pregnancy or American Indian status. There are certain categories of specified excluded individuals for

which no reliable information may be available to the State. Beginning on January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, States must generally require that the individual provide documentation when such documentation is reasonably available to verify that the individual meets the definition of a specified excluded individual under the relevant category. We discuss the requirements for States in verifying the different specified excluded individual statuses based on reliable information available to the State; the available reliable information; and the requirements when no reliable information is available to the State to verify an individual's qualification as a specified excluded individual.

a. Former Foster Care Children

As further described in section II.E.1. of this IFC, section 1902(xx)(9)(A)(ii)(I) of the Act provides that an individual "who is described in" section 1902(a)(10)(A)(i)(IX) of the Act, which refers to the eligibility group serving the FFCC group, is a specified excluded individual. Collecting information to determine if an individual is excluded based on eligibility for the FFCC group described at § 435.150 is part of a State's eligibility screening and determination process. This means that State Medicaid applications include questions to determine if an individual (1) is under age 26; (2) is not enrolled in an eligibility group described in section 1902(a)(10)(A)(i)(I) through (VII) of the Act, even if they meet the eligibility requirements for such group; (3) was in foster care under the responsibility of any State upon attaining age 18 (or such higher age as the State has elected in its title IV–E plan); and (4) was enrolled in Medicaid in any State while in such foster care. State Medicaid applications contain questions related to FFCC status to determine eligibility for this group and States should use these existing data in the State's eligibility system to verify an individual's status as a specified excluded individual under this category. Because States screen for eligibility in the FFCC group as a part of eligibility and enrollment processes, we expect States to find only a small number of FFCC in the adult group, and it is possible that some individuals described in the FFCC group will be enrolled in a section 1115 demonstration that provides MEC. States should identify if individuals in the adult group or in a section 1115 demonstration that provides MEC meet

the criteria for eligibility in the FFCC group, and if so, move them to the FFCC group, if eligible, or determine that they are specified excluded individuals under this category. Consistent with existing verification policy with respect to information not subject to change, States do not have to reverify someone's status as an FFCC for exclusion from the community engagement requirement until the individual turns age 26, which is an anticipated change in circumstances known to the State.

b. American Indians

Section 1902(xx)(9)(A)(ii)(II) of the Act establishes a broad exclusion for American Indians. For purposes of this exclusion, we are adopting the existing definition of "Indian" at § 447.51 for the specified excluded individual category at § 435.554(c)(2). Under existing eligibility rules, certain American Indians are exempt from cost sharing in Medicaid and CHIP and may receive special types of income that are not included in the MAGI calculation. They may also be eligible for special enrollment periods and cost sharing reductions for qualified health plans purchased on the Health Insurance Exchange. State Medicaid applications ask questions to identify who might be eligible for these protections (that is, cost sharing exemptions and deductions from income for Medicaid and CHIP and special enrollment periods and cost sharing reductions on the Health Insurance Exchange). The application also requests information about American Indian status as part of the race question, which is optional.

States should use these existing data collected on the application and follow their existing verification policies to verify that an individual qualifies as a specified excluded individual in this category. Notably, unlike some other exclusions which may be time limited or based on conditions that are subject to change, once verified, States do not need to reverify someone's status as an American Indian or qualification as a specified excluded individual on this basis, consistent with existing verification policy related to information not subject to change.

c. Parent, Guardian, Caretaker Relative, or Family Caregiver of a Dependent Child or a Disabled Individual

Section 1902(xx)(9)(A)(ii)(III) of the Act (implemented at § 435.554(c)(3)) establishes a category of specified excluded individuals for "parents, guardians, caretaker relatives, and family caregivers (as defined in section 2 of the RAISE Family Caregivers Act) of a dependent child 13 years of age and

under or a disabled individual."

Because each of these subcategories of individuals has different definitions and requirements, the information needed to verify an individual's status as a parent, a guardian, a caretaker relative, or a family caregiver for the purpose of this exclusion, and the reliable information available to the State to do so, varies. For all subcategories, States must design reasonable procedures and use reliable information available to the State to ensure qualifying parents, guardians, caretaker relatives, and family caregivers are identified promptly and determined to be specified excluded individuals excluded from the community engagement requirement. If there is no reliable information available to the State, or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must seek information from the individual to verify their specified excluded status. Beginning on January 1, 2028, when the State is unable to verify the specified excluded status using reliable information available to the State, or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must require documentation if documentation is reasonably available. If there is no reasonably available documentation, the State must accept other information sufficient (as determined by the State) to verify eligibility, consistent with § 435.557(b)(2)(iii).

In all instances, the State must verify that the individual receiving care is either a dependent child or a disabled individual, as both of these terms are defined at § 435.554(a) (Please refer to sections II.E.3.e. and f. of this IFC for further information regarding the who is considered a dependent child or disabled individual for the purpose of community engagement and § 435.554(a) for the definition of those terms as they apply to community engagement.) To verify the child's age, States should rely to the greatest extent possible on the household composition data available in their eligibility system. If the age of the individual receiving care is not available in the case record or eligibility system, the State must obtain that information from the applicant or beneficiary.

To verify the disability status of the individual receiving assistance as further discussed in section II.E.3.f. of this IFC, States must attempt to use reliable information available to the State, to the extent the State has consent to access the information of the individual receiving care. Where there

is no reliable information available to the State, including if the State does not have consent to access the information of the individual receiving care and the information is therefore unavailable, the State must seek information from the applicant or beneficiary to verify the disability status of the individual receiving care. The State must collect sufficient information to substantiate that the individual receiving care meets the definition of a disabled individual at § 435.554(a). We note that while the State may require that the applicant or beneficiary provide a minimum amount of information necessary to determine that the individual to whom the applicant or beneficiary provides assistance meets the definition of a disabled individual, the State may not require the name of the individual receiving care or other identifying information, and may not determine that an individual does not qualify for the exclusion only because the applicant or beneficiary declines to identify the disabled individual to whom the applicant or beneficiary is providing assistance. If the applicant or beneficiary does not have the disabled individual's consent to release their identifying information to the State, the State must require information from the applicant or beneficiary in the form of a statement or screening tool sufficient to verify the person receiving care meets the definition of a disabled individual.

As described in further detail in this section, States may also need to obtain other information to verify an applicant's or beneficiary's specified excluded individual status, such as the number of hours of care provided. States may use screening questions to identify individuals who may qualify as a specified excluded individual based on their caregiver status and follow up with those who are identified through the screening process to obtain additional information, including documentation (if applicable). However, whenever States have information indicating the individual may qualify for this exclusion, States should attempt to obtain all additional information needed to sufficiently verify an individual's caregiver status in a single request, rather than requiring the individual to fill out numerous forms or respond to multiple requests for additional information. For example, if the State needs information to verify the number of hours of assistance the family caregiver provided in a given month and that the individual to whom the family caregiver provided assistance is disabled, the State should send one request for information seeking

documentation (or other needed information in the absence of reasonably available documentation) to verify both criteria whenever possible.

The State must also verify the individual's relationship to the dependent child or disabled individual to confirm the individual is the dependent child's or disabled individual's parent, guardian, caretaker relative, or family caregiver (as defined at § 435.554(a) and implemented at § 435.554(c)(3)). We define guardian to mean an adult appointed by a court to care for and make personal decisions on behalf of an individual who cannot care for themselves, as further detailed in II.E.3.c. of this IFC. Because the definition is dependent on the legal status as determined by a court, the State must require a court order or other legal instrument in accordance with applicable State law to verify an individual's status as a guardian. States should rely on household composition information collected at application and available in their eligibility system to verify an individual is a parent or a caretaker relative whenever possible. However, States should be mindful that the terms "parent" and "caretaker relative" assume a slightly different meaning (defined at § 435.554(a)) for purposes of community engagement than they do for general Medicaid eligibility purposes.

Family caregiver as defined at § 435.554(a) means an adult family member or other individual who has a significant relationship with, and who provides care within a broad range of assistance, to a dependent child or a disabled individual. An individual who is a family caregiver as defined at § 435.554(a) is a specified excluded individual if he or she meets one of the following implementing criteria established at § 435.554(c)(3)(i)(A) through (C): (1) the individual primarily resides with a dependent child or disabled individual, as these terms are defined in section II.E.3. of this IFC, for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, (2) the individual is a relative (as specified in the "caretaker relative" definition at § 435.554(a), without regard to the requirements to live with and to assume primary responsibility requirement) of a dependent child or disabled individual as defined earlier for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, and with whom he or she does not reside, or (3) the individual does not reside with and is not a relative (as specified in the "caretaker relative" definition at § 435.554(a), without

regard to the requirements to live with or to assume primary responsibility requirement) of the dependent child or the disabled individual, as defined earlier, for whom he or she provides not less than 80 hours of assistance that is not solely incidental in nature per month. We explain in section II.E.3. of this IFC that we view shared residence with or familial relationship to the care recipient as consistent with ongoing caregiving responsibility and as strong evidence of the "significant relationship" specified in the RAISE Family Caregivers Act definition of family caregiver. Thus, individuals meeting either of those criteria are not required to demonstrate provision of a minimum number of caregiving hours but are required to demonstrate that they provide assistance that occurs on a regular basis that is not solely incidental in nature (as described in section II.E.3.h. of this IFC). As such, verifying whether an individual resides with or is related to the dependent child or disabled individual for whom he or she provides assistance is critical to determining if an individual meets the definition of a family caregiver at § 435.554(a) and qualifies as a specified excluded individual under the family caregiver component of section 1902(xx)(9)(A)(ii)(III) of the Act as implemented at § 435.554(c)(3)(i). States should rely on household composition and relationship data collected during the application process and stored in the eligibility system to verify the shared residence or familial relationship when possible. States should only seek additional information from the applicant or beneficiary to verify relationship to or co-residence with the dependent child or disabled individual if the information is not available in the State's system. If the applicant or beneficiary meets the definition of a family caregiver at § 435.554(a) and resides with or is related to the dependent child or disabled individual to whom he or she provides assistance, the State must collect information necessary to verify that the assistance provided by the applicant or beneficiary is provided on a regular basis and is not solely incidental in nature. If the State determines an individual meets the definition of a family caregiver at § 435.554(a) and does not live with and is not related to a dependent child or disabled individual for whom they are providing assistance that is not solely incidental in nature, the State is required also to verify the number of hours of assistance provided and may only determine the individual is a specified excluded individual under the

family caregiver component of the exclusion at section 1902(xx)(9)(A)(ii)(III) of the Act if the individual provides no less than 80 hours of assistance in a month. For individuals whose family caregiver status and specified excluded individual status cannot be automatically established through reliable information available to the State, States must obtain sufficient information from the applicant or beneficiary to verify their status as a specified excluded individual under the family caregiver component of the exclusion at section 1902(xx)(9)(A)(ii)(III) of the Act. States must determine what information is sufficient to verify an individual is a family caregiver, but the information must substantiate the State's determination that an individual does or does not satisfy the criteria to be a specified excluded individual on this basis. We also note that, if the individual is ineligible for the exclusion because they provided care for less than the required number of hours, the hours spent providing care are considered unpaid work and must count as such toward the 80 hours required to demonstrate community engagement on the basis of work or a combination of qualifying hour types. See section II.I.6.a. of this IFC for more information about verifying work hours.

In addition to using reliable information available to the State to identify family caregivers who could be specified excluded individuals, screening questions and tools can reduce administrative barriers and speed identification and processing for applicants and beneficiaries who may be specified excluded individuals. States should consider incorporating plain language screening questions in Medicaid applications and other program applications and forms to help identify family caregivers and to help family caregivers identify themselves as being a family caregiver. Many family caregivers do not automatically identify themselves as caregivers or recognize themselves in the role of a family caregiver for a variety of reasons. As such, States will need to craft plain language questions that are understandable and help individuals see themselves in that role, as appropriate. The questions must be sufficiently detailed for the State to determine eligibility based on an individual's responses. The report "Caregiving in the US" (2025)¹⁰¹

¹⁰¹ AARP and National Alliance for Caregiving. (2025). "Caregiving in the U.S." <https://www.aarp.org/content/dam/aarp/ppi/topics/lts/>

includes examples of screening questions used to identify those caring for a child with disabilities or a serious medical condition, and unpaid caregivers of adults. Additional examples are included in a free Caregiver Communications and Marketing Toolkit created by the National Academy of State Health Policy (NASHP)¹⁰² and the Centers for Disease Control and Prevention's Behavioral Risk Factor Surveillance System (BRFSS) Caregiver Module¹⁰³ used by several States to gather information about family caregivers.

d. Veterans with a Disability Rating as Total

Section 1902(xx)(9)(A)(ii)(IV) of the Act and implementing regulations at § 435.554(c)(4) create a specified excluded individual status for veterans with a total disability rating. VA assigns disability ratings, which can be permanent or temporary, based on the severity of a veteran's service-connected condition(s), which is stated as a percentage. For purposes of community engagement, a total, or 100 percent, disability rating—either temporary or permanent—from VA is necessary to qualify for the exclusion. An exception to this exists for veterans with a total disability based on individual unemployability (TDIU) which allows veterans with service-connected disabilities to receive 100 percent disability compensation if they cannot secure or maintain "substantial gainful employment," even if their combined disability rating is below 100 percent. We believe it is reasonable to regard these veterans, who receive 100 percent disability compensation, as having a total disability, in the same manner as all other veterans who have a combined disability rating of 100 percent and also receive 100 percent disability compensation.

Accordingly, to verify that an individual qualifies as a specified excluded individual as a veteran with a total disability rating, if the State does not have an established data connection to VA to verify an individual's status, the State must request documentation from the individual demonstrating the veteran's permanent or temporary disability rating of 100 percent (or the

veteran's status as TDIU even if their combined disability rating is below 100 percent). We understand that documentation of a disabled veteran's disability rating is readily available through the VA and that veterans may access information related to their disability designation through the VA website at <https://www.va.gov/>. States must reverify a veteran's temporary total disability status at least once every 12 months because the VA's determination of temporary conditions indicates they are subject to change and likely to improve. States may reverify temporary total disability status as determined by the VA at each renewal, but they may not verify more frequently than each renewal. For permanent disability status determinations, States must rely on the VA's determination that the condition is not likely to improve and, once such status has been verified, States must not reverify an individual's permanent disability status.

We are assessing the availability of data from VA and whether we can make it available through the Hub to verify a veteran's total disability rating (100 percent and/or TDIU). If this data source becomes available to States, we will require States to establish a connection to the Hub to verify this information or request a waiver requesting authority to establish connections to data sources or mechanisms as provided at §§ 435.945(k) and 435.557(e) within 12 months of their first availability through the Hub to verify veteran disability status.

e. Individuals Who Are Medically Frail or Otherwise Have Special Medical Needs

The statute establishes a specified excluded individual status for individuals who are medically frail or otherwise have special medical needs in section 1902(xx)(9)(A)(ii)(V) of the Act. Section 435.554(c)(5)(i) defines medical frailty to include an individual: who is blind or disabled (as defined in section 1614 of the Act); with an SUD, with a disabling mental disorder; with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADL; or with a serious or complex medical condition (which is defined at § 435.554(c)(5)(i)(E)). We are further defining a medically frail individual at § 435.554(c)(5)(i) as an individual whose physical, mental, or other behavioral health condition significantly impairs the individual's ability to comply with the community engagement requirement in this subpart. Accordingly, when determining whether an individual qualifies as a specified excluded

individual on the basis of being medically frail or having other special medical needs, the State must verify both the presence of a condition or diagnosis that meets the criteria described at § 435.554(c)(5)(i)(A) through (E) and that the condition or diagnosis significantly impairs the individual's ability to comply with the community engagement requirement.

In accordance with requirements in section 1902(xx)(5) of the Act, States must, where possible, verify medical frailty or other special medical needs on an *ex parte* basis using reliable information available to the State without requiring the individual to submit additional information. To comply with this requirement, at § 435.557(f)(1), we provide that the State must attempt to verify that an individual is a specified excluded individual on the basis that the individual is medically frail or has other special medical needs as defined at § 435.554(c)(5) using reliable information available to the State, including adjudicated claims or encounter data, as relevant to the individual, from the preceding 12 months. States may not consider information older than 12 months when verifying medical frailty or other special medical needs, because older information may not reflect the individual's current condition.

States must identify individuals who are medically frail or who otherwise have special medical needs and exclude them from the community engagement requirement. States should consider incorporating plain language screening questions in Medicaid applications and other program applications and forms for use at application and renewal to identify individuals who may be medically frail or otherwise have special medical needs, including to identify beneficiaries who were previously applicable individuals and who may newly qualify for an exclusion on the basis of medical frailty or otherwise having other special medical needs. The questions should be as concise as reasonably possible and presented in plain language. If an individual is identified as potentially medically frail or otherwise having other special medical needs based on the initial screening questions, the State must attempt to verify medical frailty using reliable information available to the State prior to seeking documentation or other information from the individual to determine whether the individual is a specified excluded individual on this basis, as specified in § 435.557(f).

Information gathered by States to verify medical frailty or otherwise

¹⁰² family-caregiving/caregiving-in-us-2025.doi.10.26419-2fppi.00373.001.pdf.

¹⁰³ "Caregivers Communications and Marketing Toolkit," Support Caregiving, <https://supportcaregiving.org/caregivers-communications-and-marketing-toolkit/>.

¹⁰⁴ "2019 Caregiving Module," Centers for Disease Control and Prevention. <https://www.cdc.gov/healthy-aging-data/media/pdfs/2024/07/2019-caregiver-module-5081.pdf>.

having special medical needs should include multiple domains to be effective in identifying individuals who meet this exclusion, including their condition(s), utilization of services (for example, inpatient hospital services, intensive outpatient services, SUD services, etc.), and their level of impairment (for example, need for assistance with one or more ADLs, etc.). We have also reviewed examples of State processes for identifying individuals who are medically frail or otherwise have special medical needs through algorithms using administrative claims data that assign acuity scores to individuals, which potentially could be used to make a determination of medical frailty or otherwise having special medical needs (for example, a score over a specified threshold could be used to determine an individual is medically frail). States may use an approach that relies on lists of qualifying diagnosis codes combined with utilization data and other factors, such as severity of conditions, to determine medical frailty or otherwise having other special medical needs. However, in some cases, reliable claims information may not be available to the State for individuals who are medically frail or otherwise have other special medical needs, particularly in cases where an individual recently obtained a diagnosis and medical services, but the claims data are lagging. For this reason, the absence of adjudicated claims or encounter data altogether, as well as the absence of particular claims or types of claims in available adjudicated claims data, may not be used to determine ineligibility for the exclusion based on medical frailty or other special medical needs. For example, an individual may not be determined not to be medically frail only because their condition or utilization relates to one or more non-listed diagnosis codes. States must provide an individual with the opportunity to provide documentation or other information demonstrating medical frailty or otherwise having other special medical needs status when the State is unable to verify the excluded status using information available to the State, as provided in § 435.557(f).

Some individuals may not identify themselves as having a condition that could qualify them as a specified excluded individual on this basis for several reasons, even upon completing a screener, but their status as medically frail or otherwise having special medical needs may be apparent based on other documentation or information provided by the individual. States may accept provider documentation from

many types of practitioners, including physicians, nurse practitioners, physician assistants, psychologists, counselors and therapists, clinical social workers, and other practitioners credentialed by the State, that are qualified to determine that an individual's condition qualifies them as medically frail or having other special medical needs under State scope of practice laws. We note that States' lists of practitioners qualified to determine that an individual's condition qualifies them as medically frail or having other special medical needs must be shared with us upon request as part of our oversight and data monitoring activities.

We recognize that for individuals who are newly applying for Medicaid, and for enrolled beneficiaries who are newly attesting to specified excluded individual status based on medical frailty or otherwise having special medical needs, there may not be reliable information available to the State. This may be especially true if the individual has not received medical services due to prior lack of health coverage, or for enrolled beneficiaries, because the condition is new and the individual has not yet received medical care for the new condition. For beneficiaries who have received medical care, the services received may not yet be reflected in reliable information available to the State due to claims lag. For such individuals, the State would not have reliable information, such as adjudicated claims or encounter data from the last 12 months, to verify that an individual qualifies as a specified excluded individual on this basis.

At § 435.557(f)(1)(ii), we explain the verification requirements when no reliable information is available to the State to verify medical frailty, or when the reliable information available is not reasonably compatible with the information provided by or on behalf of the individual. Beginning on January 1, 2028, States may only use a statement or other information provided under penalty of perjury one time during an individual's period of enrollment, to verify eligibility as a specified excluded individual on the basis of medical frailty or having other special medical needs. We define an individual's period of enrollment defined at § 435.557(a) as a continuous period of enrollment in coverage under the State plan or waiver without the individual being disenrolled, regardless of the number of consecutive eligibility periods, of redeterminations or renewals, or of transitions between eligibility groups). Once a statement or other information provided under penalty of perjury has been used on or after January 1, 2028,

to verify eligibility for an exclusion based on being medically frail or having other special medical needs, at the next regularly scheduled renewal, in the absence of available information, the State must require the individual provide documentation demonstrating the individual's current medical frailty status.

For example, if the State accepts a statement provided under penalty of perjury to verify a new applicant is medically frail because there is no reliable information available to the State in February 2028, the State must verify that person's medical frailty status using reliable information available to the State or documentation submitted by or on behalf of the individual when renewing their eligibility in August. If the individual remains continuously enrolled and later declares medical frailty status on another basis, the State may not accept the individual's statement or other information of provided under penalty of perjury as verification that the individual is medically frail since the individual's prior status was verified using a statement provided under penalty of perjury. To verify the individual's medical frailty status on this new basis, the State must use reliable information available to the State or documentation submitted by or on behalf of the individual.

We believe that requiring verification of medical frailty to confirm an individual's specified excluded status using data or other documentation after the State has verified that exclusion using a statement or other information provided under penalty of perjury (such as a screening tool) will motivate individuals to access care. Requiring States to verify an individual's medically frail status using reliable information available to the State or, beginning on January 1, 2028, documentation after the State has verified that exclusion using a statement or other information provided under penalty of perjury (such as using a screening tool) is reasonable, because once an individual is enrolled in coverage or once an enrolled beneficiary experiences a new or worsening condition that could result in qualifying for the medical frailty exclusion, the beneficiary is able to receive covered services to address their health condition. We encourage beneficiaries in this situation to access appropriate services for which they are entitled to coverage, which is in beneficiaries' best interest and may lower future, downstream costs to Medicaid that could result from delaying receipt of necessary care. When beneficiaries

access covered services, their receipt of services will appear (with some degree of lag) in adjudicated claims or encounter data (as applicable), which constitutes reliable information available to the State. Thus, once a beneficiary has enrolled in coverage and started receiving covered services to address their health condition, we expect States will be able to reverify their continued qualification for the medical frailty exclusion (as applicable) on an *ex parte* basis using information contained in State systems.

While we believe requiring documentation when there is no reliable information available after previously verifying an individual's medical frailty status using a statement or other information provided under penalty is reasonable, we recognize that some States may need to make system and process changes to implement these documentation requirements. As such, as provided in § 435.557(f)(1)(i), States may require documentation or accept other information (even if documentation is reasonably available) to verify an individual's medical frailty status through December 31, 2027.

States must reverify that an individual is medically frail or otherwise has other special medical needs at least every 12 months, although States may reverify more frequently, such as at each renewal. For individuals who were enrolled or last verified based on information provided under penalty of perjury, such as responses to questions in a screening tool, without additional verification (such as reliable information available to the State or documentation provided by the individual), § 435.557(f)(1)(ii)(A) requires, beginning January 1, 2028, that the individual's medical frailty status must be reverified at the next regular renewal, which could be 6 months from the individual's last verification even in a State that otherwise elects to reverify medical frailty status every 12 months. States must attempt this verification and each verification thereafter using adjudicated claims or encounter data as relevant to the individual for the preceding 12 months, before requesting documentation from the individual. We expect that after individuals are enrolled and gain access to coverage, States generally will be able to reverify on an *ex parte* basis using reliable information available to the State. We therefore believe requiring reverification at least once every 12 months balances the goal of promoting continued coverage for vulnerable populations with the importance of community engagement in achieving the program's goals, as well as the need to maintain

program integrity. Moreover, standardizing the timeframe simplifies the administration of the requirement.

Finally, CMS recognizes that processes for the identification and verification of individuals who may be medically frail or otherwise have special medical needs intersect with Federal privacy requirements; in particular, we recognize the intersection of 42 CFR part 2 and the medically frail exclusion for individuals with SUDs. It is critical that Federal civil rights requirements for individuals with disabilities, as well as Federal privacy protections, be observed in this and all contexts related to the implementation of the community engagement requirement. States must ensure that they take appropriate steps to safeguard Medicaid beneficiary and applicant information used in the specified excluded individual identification and verification processes discussed in this section of the rule, and that the information is accessed, stored, and handled consistent with all applicable Federal requirements, including section 1902(a)(7) of the Act; 42 CFR 431, subpart F; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); 42 CFR part 2;¹⁰⁴ and any other applicable Federal privacy laws, as well as applicable State laws. The Department of Health and Human Services Office for Civil Rights (OCR) enforces the requirements of 42 CFR part 2. We will work with OCR to provide States with technical assistance on the intersection of 42 CFR part 2 and the community engagement requirement. Further, applicable individuals who meet the definition of a person with a disability under section 504, section 1557, or the ADA but do not qualify for an exclusion or exception may require reasonable modifications to comply with the community engagement requirement. We remind States that they are required to provide such reasonable modifications in implementing the community engagement requirement where necessary to avoid discrimination on the basis of disability under section 504, section 1557, and the ADA. In addition, States must comply with notice requirements at § 435.917(a) and must provide assistance to individuals seeking help with the application or renewal process in accordance with § 435.908(a).

¹⁰⁴ For more information about the 42 CFR part 2 requirements regarding confidentiality of SUD patient records, see: "Understanding Confidentiality of Substance Use Disorder (SUD) Patient Records or 'Part 2,'" OCR, last updated February 13, 2026, <https://www.hhs.gov/hipaa/part-2/index.html>.

f. Individuals Compliant With TANF Work Requirements and Individuals Not Exempt From SNAP Work Requirements

Section 1902(xx)(9)(A)(ii)(VI) of the Act and implementing regulations at § 435.554(c)(6) and (7) describe categories of specified excluded individuals that reference existing work requirements in other jointly administered Federal-State programs. Specifically, clause (ii)(VI)(aa) references TANF and clause (ii)(VI)(bb) references SNAP. Section 1902(xx)(9)(A)(ii)(VI)(aa) of the Act and implementing regulations at § 435.554(c)(6) create an exclusion from the community engagement requirement for individuals who comply with the work requirements imposed by the State under section 407 of the Act as a condition of eligibility for TANF. Section 1902(xx)(9)(A)(ii)(VI)(bb) of the Act and the implementing regulations in § 435.554(c)(7) create an exclusion for an individual who is a member of a household that receives SNAP benefits and is not exempt from a work requirement under the Food and Nutrition Act of 2008.

As such, States must have a process to obtain information from the TANF agency and from the SNAP agency to determine whether an individual meets either of these criteria. If so, then the individual meets the definition of a specified excluded individual and therefore is not an applicable individual subject to the Medicaid community engagement requirement.

Our understanding is that many States already use TANF or SNAP (or both) agency systems as reliable sources of information available to the State for purposes of verifying other factors of eligibility or maintain shared eligibility systems with those programs. These States already have access to information to verify that an individual is a specified excluded individual under these categories based on the individual's most recent TANF work requirement compliance status or SNAP household eligibility and work requirement exemption and exception status. However, if the State does not yet have means to obtain these data from the TANF and the SNAP agency, the State must establish a process to obtain all the information needed from both programs to determine if an individual is a specified excluded individual under either of these categories to comply with the requirement at § 435.557(b)(1).

If there is no reliable information available to the State (for example, no information about the individual is returned from SNAP or TANF), or the reliable information is not reasonably

compatible with the information provided by or on behalf of the individual, the State must seek information from the individual to verify their specified excluded status. Beginning on January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must require documentation if documentation is reasonably available. If there is no reasonably available documentation, the State must have a process to accept other information to verify eligibility, consistent with § 435.557(b)(2)(iii).

g. Participants in Drug Addiction or Alcoholic Treatment and Rehabilitation Programs

Section 1902(xx)(9)(A)(ii)(VII) of the Act establishes an exclusion for individuals “participating in a drug addiction or alcoholic treatment and rehabilitation program (as defined in section 3(h) of the Food and Nutrition Act of 2008).” The statute establishes an exclusion for active participants in certain drug addiction or alcoholic treatment and rehabilitation programs, which we implement at § 435.554(c)(8). In accordance with requirements under section 1902(xx)(5) of the Act to verify an individual is a specified excluded individual on an *ex parte* basis using reliable information available to the State without requiring the individual to submit additional information, States must attempt to verify participation in drug addiction or alcoholic treatment and rehabilitation programs using adjudicated claims, payment and encounter data, and other relevant information available to the State to attempt to verify an individual’s qualification for the exclusion.

In the absence of reliable information available to the State or if the reliable information available to the State is not reasonably compatible with the information provided by or on behalf of the individual, States must obtain sufficient to verify the individual’s current participation in a drug addiction or alcoholic treatment and rehabilitation program. Beginning on January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must require documentation if documentation is reasonably available. If there is no reasonably available documentation, § 435.557(b)(2)(iii) requires that the State accept other information sufficient

(as determined by the State) to verify eligibility.

h. Inmate of a Public Institution

Section 1902(xx)(9)(A)(ii)(VIII) of the Act provides an exclusion from the community engagement requirement for individuals who are inmates of a public institution. As implemented at § 435.554(c)(9), “inmate of a public institution” has the meaning given the term at § 435.1010 and includes individuals in correctional institutions such as State or Federal prisons, county or local jails, detention facilities, or other carceral settings. States must ensure they have procedures to obtain data showing whether an individual is an inmate of a public institution to determine if the individual is a specified excluded individual on this basis. States must use reliable information available to the State to the extent possible to determine whether an individual is (or was at any point in the prior 3 months for the purpose of verifying the exception at § 435.553(b)) an inmate of a public institution. To access these data, including from jails and prisons, States should use existing connections with other State agencies and local governments that were established to implement requirements under division G, title I, section 205 of the Consolidated Appropriations Act, 2024 (CAA, 2024; Pub. L. 118–42) (concerning the prohibition on termination of enrollment due to incarceration). States may also wish to consider employing processes developed through section 1115 demonstrations serving incarcerated or formerly incarcerated populations reentering the community to support verification of qualification as a specified excluded individual on this basis. If the State does not have a process to obtain reliable information identifying an individual as a current or recent former inmate, the State must establish a process to obtain this information to comply with the requirement at § 435.557(b)(1). When there is no reliable information available to the State, including prior to establishing a process to obtain data showing whether an individual is or recently was an inmate of a public institution, or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must obtain sufficient documentation (if it is reasonably available) or other information from the individual to verify qualification as a specified excluded individual on this basis. As specified at § 435.557(b)(2), beginning on January 1, 2028, when there is no

reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must require documentation if reasonably available and may accept other information only in the absence of reasonably available documentation (and must have a process to do so in cases where documentation does not exist or is not reasonably available).

i. Pregnant or Eligible for Postpartum Coverage

Section 1902(xx)(9)(A)(ii)(IX) of the Act establishes an exclusion for pregnant and postpartum women who are entitled to medical assistance under section 1902(e)(5) or (16) of the Act. Consistent with existing requirements under § 435.956(e), the State must accept an attestation of pregnancy or entitlement to postpartum medical assistance unless the State has information that is not reasonably compatible with such attestation. Individuals may report pregnancy at application, post-enrollment as a change in circumstance (including in connection with a verification of compliance with the community engagement requirement more frequently than at renewal, if elected by the State), or at renewal. States should use this information from their eligibility system or the individual’s case record, including their application forms, to verify qualification as a specified excluded individual on this basis. In addition, when checking data sources to determine whether a beneficiary who was previously identified as an applicable individual is now newly excluded during a more frequent verification or at renewal. States may identify pregnancy or postpartum status based on claims data, encounter data, health records, or other reliable information available to the State. Consistent with the requirement at section 1902(xx)(5) of the Act to use reliable information available to the State to verify an individual’s specified excluded status, the State must use such information to determine whether an individual qualifies as a specified excluded individual on the basis of pregnancy or eligibility for postpartum coverage without requiring information from the individual.

8. Mandatory Exceptions

States must deem applicable individuals as having demonstrated community engagement for a month if, for all or part of a month, they fall into a mandatory exception specified in

section 1902(xx)(3)(A) of the Act and implemented at § 435.553.

Mandatorily excepted individuals are: specified excluded individuals as defined at § 435.554 and discussed in section II.E. of this IFC, individuals under age 19, individuals entitled to or enrolled in Medicare part A or enrolled in Medicare part B, individuals described in a mandatory eligibility group under section 1902(a)(10)(A)(i)(I) through (VII) of the Act, and individuals who were an inmate of a public institution at any point during the prior 3 months ending on the first day of a month in which the individual is otherwise subject to the requirement to demonstrate community engagement.

Many of the mandatory exceptions include individuals for whom the State's eligibility system is likely to have existing information on which the State must rely to verify that an applicable individual qualifies for a mandatory exception. For example, as part of the eligibility determination, a State would generally screen for and have information on individuals who were under the age of 19, entitled to or enrolled for Medicare benefits under part A or B, or described in any mandatory eligibility group in section 1902(a)(10)(A)(i)(I) through (VII) of the Act. Because States are already required to obtain this information as a part of the eligibility determination, we believe the verification of these elements should be straightforward based on information already contained and readily available in the State's enrollment and eligibility system. In addition, States must establish connections with other State or local agencies that provide reliable information relevant to an individual's status as an inmate of a public institution at any point during the 3-month period before any month for which the applicable individual otherwise would be required to demonstrate community engagement, as discussed in preamble section II.I.7.h. of this IFC.

When verifying an applicable individual qualifies for a mandatory exception, the requirement to use reliable information available to the State applies, as implemented at § 435.557(g)(1). Section 1902(xx)(3)(A) of the Act permits the State to deem an individual to have demonstrated community engagement for a month without further verification "of the information resulting in such deeming" if the individual meets the criteria for a mandatory exception for all or part of that month. We interpret this requirement to allow a State to deem an applicable individual to have demonstrated community engagement

without requiring documentation or other information in the absence of reasonably available documentation only if the individual provided information on an application, renewal or other State form, or when reporting a change in circumstances in accordance with § 435.557(b)(4) indicating they qualify for an exception and there is no reliable information available to the State to verify the information the individual provided. If reliable information available to the State is inconsistent with information provided by the applicable individual, beginning on January 1, 2028, the State must require documentation or other information if documentation is not reasonably available. This documentation or other information is not required for the purpose of verifying the underlying information resulting in the deeming of compliance but rather to resolve the inconsistency. We also stress that not requiring documentation or other information to verify an applicable individual meets the criteria for an exception is a State option under the statute but States may require documentation (if it is reasonably available) in the absence of reliable information available to the State and are encouraged to do so in the interest of program integrity.

9. Verifying Optional Short-Term Exceptions

Section 1902(xx)(3)(B) of the Act, implemented at § 435.555 and discussed in section II.G. of this IFC, provides States with the option to implement exceptions from the community engagement requirement for specific short-term hardship events. States that elect to implement these optional exceptions must deem applicable individuals experiencing a short-term hardship event for a given month as having demonstrated community engagement for that month.

a. Applicable Individuals in Certain Medical Institutions or Receiving Outpatient Services

As specified at § 435.555(d)(1), in a State that elects to offer exceptions for short-term hardships, an applicable individual experiences a short-term hardship if they receive inpatient hospital services, nursing facility services, services in an ICF/IID, inpatient psychiatric hospital services, or such other services of similar acuity as discussed in section II.G.4. of this IFC. Consistent with existing verification policy and § 435.557(g)(2)(i), the State must attempt to verify that an applicable individual has received these services using

reliable information available to the State before requesting information from the individual. As defined at § 435.557(a), reliable information available to the State includes, but is not limited to, adjudicated claims and encounter data as relevant to the individual for the preceding 12 months (as applicable). However, States may not have these data available, or there may be a lag in receipt of such data. In the absence of reliable information available to the State, States must seek additional information to verify qualification for the short-term hardship exception. Beginning on January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the State must require documentation (for example, from a provider, a medical bill or admission or discharge paperwork) if documentation is reasonably available, or other information, as required at § 435.557(b)(2) if no documentation exists or is reasonably available. The State must ensure that the eligibility record includes sufficient information to substantiate the State's eligibility determination for the short-term hardship exception.

b. Applicable Individual or Dependent Must Travel Outside of Their Community for an Extended Period of Time To Receive Medical Services Necessary for a Serious or Complex Medical Condition

As specified at § 435.555(d)(4), an applicable individual experiences a short-term hardship if the applicable individual or their dependent must travel outside of their community of residence for an extended period of time to receive medical services necessary to treat a serious or complex medical condition, as defined at § 435.554(c)(5)(i)(E), that are not available within their community of residence. States must first attempt to verify the serious or complex condition and receipt of medical services, including the location where and the date(s) on which the services were received, using reliable information available to the State, including adjudicated claims or encounter data as relevant to the individual for the preceding 12 months and information from other electronic data sources (as applicable). However, we anticipate there will be instances in which no reliable information is available to the State, particularly when the applicable individual's dependent, and not the applicable individual, needed to travel outside of their community of residence

to receive care. Beginning on January 1, 2028, when no reliable information is available to the State, the State must require documentation if documentation is reasonably available, such as medical records providing the dates and location of services. The State must also establish procedures to accept other information in the absence or reasonably available documentation.

In addition, the State must verify the relationship to the individual who received care, if that individual was the applicable individual's dependent. To the extent possible, the State must use information available in the applicable individual's case record or the State's eligibility system, such as household composition data collected at application, to verify the relationship. If the information is not available in the case record or eligibility system or using other reliable information available to the State, the State must seek additional information to verify the relationship. Beginning January 1, 2028, the State must obtain documentation if such is reasonably available. If documentation is not reasonably available, the State must have procedures in place to accept other information sufficient to verify the individual's eligibility (as determined by the State). We note that the latitude described in section II.I.3. of this IFC allowing States to accept other information even if documentation is reasonably available through January 31, 2027, does not apply to verifying guardianship status. If the applicable individual is the dependent's legal guardian, a court order or other legal instrument is required to verify the relationship.

While an applicable individual is not required to travel with their dependent for necessary medical treatment, for such an applicable individual to receive this short-term hardship exception, the State must verify that the applicable individual had to take leave from employment or had to absent themselves from other community engagement activities for reasons related to the dependent's condition or travel. Section II.G.7. of this IFC provides examples of reasons related to the dependent's condition or travel.

c. Emergency and Disaster Declarations and High Unemployment Rate

As specified at § 435.555(d)(2) and further described in section II.G.5. of this IFC, an applicable individual residing in a county or equivalent unit of local government in which an emergency or disaster exists as declared by the President under the Stafford Act or the NEA, meets the short-term hardship exception, if their State elects

to offer short-term hardship exceptions. Similarly, an applicable individual meets the criteria for a short-term hardship if they reside in a county or equivalent unit of local government in which the unemployment rate is at or above 8 percent or 1.5 times the national unemployment rate (whichever is less) provided the State demonstrates the unemployment rate meets the threshold in a request to CMS, consistent with requirements described in section II.G.6. of this IFC. At § 435.557(g)(2)(ii), we implement the requirement that States electing to offer short-term hardship exceptions apply an automatic short-term hardship exception to applicable individuals residing in these affected locations without requesting any verification relating to these circumstances from such individuals. States must store and be able to produce records supporting verification of such emergency, disaster, or high unemployment rate upon request, for an audit or other review.

J. Noncompliance Procedures

Section 1902(xx)(6) of the Act, which we implement at § 435.558, specifies the requirements for States when they are unable to verify that an applicable individual has demonstrated community engagement or is deemed to have demonstrated community engagement under § 435.553, or if applicable, § 435.555, during the review period specified at § 435.556(a). When a State is unable to verify compliance, section 1902(xx)(6)(A)(i) and (ii) of the Act requires the State to provide the applicant or beneficiary with a notice of noncompliance and 30 calendar days from the date the notice is received for the individual to make a satisfactory showing that they met the community engagement requirement or that such requirement does not apply. Section 1902(xx)(6)(A)(ii)(II) of the Act requires the State to continue to provide coverage to beneficiaries during the 30-calendar day period, and the regulations at § 435.930(b) require that a State maintain coverage for beneficiaries unless and until they are determined ineligible for medical assistance. If the individual fails to make a satisfactory showing during the 30-calendar day period, section 1902(xx)(6)(A)(iii) requires the State to deny the application, or if applicable, disenroll the beneficiary from coverage no later than the end of the month following the month in which the 30-calendar day period ends. Section 1902(xx)(6)(A)(iii)(I) of the Act and regulations in §§ 435.911(c)(2) and 435.916(f) require the State to first consider if there is another basis of

eligibility for which the individual qualifies before denying the application for coverage or disenrolling the beneficiary from coverage.

Sections 1902(a)(3) and 1902(xx)(6)(A)(iii)(II) of the Act and §§ 435.917 through 435.918 and 42 CFR part 431, subpart E require States to provide written notice of an eligibility determination (including at least 10 days advance notice in the case of an eligibility termination or reduction) and the opportunity for a fair hearing to applicants and beneficiaries.

Section 1902(xx)(6)(B) of the Act requires the notice of noncompliance to include information on how the individual may make a satisfactory showing and how the individual may reapply for coverage.

While the statute uses the word "noncompliance" to describe the procedures that States must follow when they are unable to verify an individual's compliance with the community engagement requirement, the notice of noncompliance serves a similar purpose to that of a request for information in States' existing eligibility verification processes. The initiation of the noncompliance procedures described in section 1902(xx)(6) of the Act does not mean the State has made a final determination of noncompliance with the community engagement requirement or a determination of ineligibility for Medicaid. Rather, these procedures must be initiated when the State is unable to confirm, based on available information, that the individual has demonstrated community engagement, is deemed to have demonstrated community engagement, or is not an applicable individual (including those who meet the criteria for a specified excluded individual). Only after the individual receives the 30-calendar day opportunity to make a satisfactory showing can the State determine if the individual demonstrated or is deemed to have demonstrated community engagement or is excluded from the requirement and make a final determination of Medicaid eligibility.

1. Providing a Notice of Noncompliance

At § 435.558(a)(1), we implement the requirement in section 1902(xx)(6)(A)(i) of the Act that a State must provide applicable individuals with a notice of noncompliance when it is unable to verify that an individual has met the requirement to demonstrate community engagement prior to determining the individual is ineligible. At § 435.558(a)(2), we implement the requirement that the State provide such individuals with 30 calendar days

beginning on the date such notice is received to make a satisfactory showing of their compliance with the community engagement requirement or that such requirement does not apply. Because individuals are provided a notice of noncompliance when the State is unable to verify their compliance with community engagement, we interpret the phrase “satisfactory showing” of compliance to mean the individual provides sufficient information or documentation to allow the State to verify compliance with the community engagement requirement for the review period in accordance with the verification procedures discussed in section II.I. of this IFC.

At § 435.558(a)(3), we specify that States must continue to furnish Medicaid to enrolled beneficiaries until an individual is determined ineligible consistent with long-standing regulations at § 435.930(b). As such, States are not permitted to terminate coverage for an individual who is sent a notice of noncompliance during the 30-calendar day response period as required under section 1902(xx)(6)(A)(ii)(II) of the Act or until the State determines the individual is ineligible (including because the individual has failed to provide information or documentation necessary to verify compliance with the community engagement requirement), whichever is later.

2. Defining “Unable To Verify” Compliance With the Community Engagement Requirement

We specify in § 435.558(b) when a State is considered to be unable to verify that an applicable individual has met the requirement to demonstrate community engagement at application and renewal.

a. Defining “Unable To Verify” at Application

At § 435.558(b)(1), we specify when a State is considered to be unable to verify that an applicant has met the requirement to demonstrate community engagement at application. Specifically, a State is considered unable to verify compliance when after reviewing the information provided on the application and any reliable information available to the State as defined at § 435.557(a), the State still lacks sufficient information to determine whether the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required under the State plan. A State is considered to have insufficient information at application if: (1) the information provided by the applicant is

not reasonably compatible with the reliable information available to the State, or (2) the individual did not provide the additional information or documentation requested by the State to verify that they met or are deemed to have met the community engagement requirement in accordance with the processes described in section II.I. of this IFC. States may follow long-standing policy to accept an applicant’s declaration under penalty of perjury on the application that demonstrates they do not meet eligibility criteria without conducting additional verification to refute the information provided by the applicant. As such, a State may accept the declaration on the application without further verification and be considered to have verified the applicant’s noncompliance with the community engagement requirement when an applicable individual provides information on the application that they do not meet the requirement during the review period under § 435.556(a)(1).

b. Defining “Unable To Verify” at Renewal

In § 435.558(b)(2), we provide States with two options to determine when they are unable to verify that a beneficiary has met the requirement to demonstrate community engagement during a renewal of eligibility. The State must document its selected option in the State plan.

Option 1

Under the option defined at § 435.558(b)(2)(i), a State must consider that it is unable to verify an applicable individual’s compliance with the community engagement requirement when the reliable information available to the State accessed at renewal, consistent with § 435.916(a)(2), is not sufficient to verify compliance with the community engagement requirement. This situation could arise when sources of reliable information available to the State either: (1) do not return information to indicate the individual demonstrated community engagement or qualified for an exception to the community engagement requirement, or that the individual is a specified excluded individual; or (2) return information that suggests that the individual did not demonstrate compliance with or an exception to the community engagement requirement for the number of months considered under the review period defined under § 435.556(a)(2) (for example, the reliable information indicates the individual worked less than 80 hours and no other information is identified about other qualifying activities for a required

month). When this occurs, the State is considered unable to verify compliance with the community engagement requirement and must provide the beneficiary the notice of noncompliance under § 435.558(c) concurrently with the pre-populated renewal form provided under § 435.916(a)(3).

We note that the regulations at § 435.916(a)(3)(B) require the State to provide MAGI beneficiaries with a minimum of 30 days to respond to a renewal form, but States are permitted to provide more time. Under this option, States that provide beneficiaries more than 30 days to return their renewal form may want to consider adjusting their response timeframe so it aligns with the 30-calendar day period to respond to a notice of noncompliance under section 1902(xx)(6)(A) of the Act. The 30-calendar day timeframe for the notice of noncompliance cannot be extended to align with a longer period for beneficiaries to return their renewal form. Aligning the response timeframe for the renewal form and notice of noncompliance can help a State gather as much information as possible if it needs to consider eligibility on other bases or for other insurance affordability programs timely. A State may also avoid sending beneficiaries multiple requests for information with different deadlines, which could be potentially confusing to beneficiaries.

Option 2

Under the second option we define at § 435.558(b)(2)(ii), a State is unable to verify an applicable individual’s compliance with the community engagement requirement only after providing the pre-populated renewal form in accordance with § 435.916(a)(3) to a beneficiary whose eligibility cannot be renewed based on reliable information in accordance with § 435.916(a)(2). Specifically, a State would consider that it is “unable to verify” an individual’s compliance if either: (1) the returned renewal form does not provide sufficient information to demonstrate the beneficiary’s compliance with or exception from the community engagement requirement, or to demonstrate that the requirement does not apply; or (2) the beneficiary does not return their renewal form when the only information needed to redetermine eligibility is related to demonstrating compliance with the community engagement requirement. The State is then considered unable to verify compliance with the community engagement requirement and must provide the beneficiary the notice of noncompliance under § 435.558(c).

This option differs from option 1 because the State would send the notice of noncompliance to the beneficiary after the time allotted by the State under § 435.916(a)(3) to return the renewal form or, if earlier, after the individual has returned their renewal form without sufficient information to verify that the individual demonstrated community engagement, met an exception, or is excluded from the requirement.

We note that under this second option, the State is only required to send the notice of noncompliance if compliance with the community engagement requirement is the only factor of eligibility that remains to be verified after the time allotted for the beneficiary to return the renewal form has elapsed. A State does not need to send the noncompliance notice in instances where the State must request information on the pre-populated renewal form related to multiple factors of eligibility, and the individual does not return their form or returns their form without all the necessary information for eligibility criteria other than community engagement. In this case, the State must provide notice and fair hearing rights consistent with § 435.917(b) and part 431 Subpart E before disenrolling the individual for procedural reasons. States should also inform such individuals that, if they later return their renewal form, during the reconsideration period under § 435.916(a)(3)(iii), their eligibility may be reconsidered and how the individual may demonstrate community engagement during the reconsideration period.

We outline two scenarios under Option 2 when an individual does not return the renewal form to illustrate when the State needs to send the notice of noncompliance.

Option 2—Scenario 1: After checking reliable information available to the State during the *ex parte* process, the State has reliable information available to verify continued eligibility for all factors of eligibility for an applicable individual except community engagement. The State sends the applicable individual a pre-populated renewal form that requests information related to community engagement. If the applicable individual does not return their renewal form requesting information related to community engagement, the State must follow the community engagement noncompliance procedures at § 435.558(a), beginning with sending the noncompliance notice.

Option 2—Scenario 2: After checking reliable information available to the State during the *ex parte* process, the State does not have sufficient reliable

information to complete the renewal for State residency or community engagement and sends the applicable individual a pre-populated renewal form that requests information needed to complete the renewal. If the applicable individual does not return the renewal form with requested information on residency, the community engagement noncompliance procedures at § 435.558(a) do not apply in this scenario because the State does not have sufficient information to determine the individual's continued eligibility for Medicaid. The State must provide notice and fair hearing rights consistent with § 435.917(b) and Part 431 Subpart E and disenroll the individual from coverage for procedural reasons at the end of the individual's eligibility period.

The second option could result in the State needing to send the notice of noncompliance to fewer individuals, as States are expected to collect the information needed to renew eligibility on the renewal form, including information related to community engagement. However, a State selecting this option would need to account for the additional time it would take to complete renewals, because the State is providing two separate periods of at least 30-calendar days for the individual to provide information with the pre-populated renewal form and the noncompliance notice. States must complete the entire renewal process, including the noncompliance procedures, by the end of the beneficiary's eligibility period.

We believe that providing States with these two options allows them the ability to operationalize the noncompliance procedures within the context of the existing renewal process, without creating unnecessary confusion for the beneficiary or disruptions to State operations, in the manner the State determines most appropriate for its circumstances.

If a State receives a completed renewal form and any requested information or documentation after the timeframe provided by the State, but prior to the end of an individual's eligibility period, the State must act on this information by promptly redetermining eligibility and must have a mechanism in place to ensure that eligibility and coverage continue, consistent with § 435.930(b), until the information received is evaluated and a final redetermination is made.¹⁰⁵

¹⁰⁵ CMCS Informational Bulletin, "Medicaid and Children's Health Insurance Program (CHIP) Renewal Requirements," (December 4, 2020), pg. 5, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib120420.pdf>.

c. Defining "Unable To Verify" During More Frequent Verifications of Compliance With Community Engagement

At § 435.558(b)(3), we specify that, for States electing to conduct more frequent verifications of community engagement for applicable individuals under § 435.557(d), the State may select one of two options, similar to those provided at renewal, to determine when it is considered unable to verify that an applicable individual has satisfied the requirement to demonstrate community engagement during a renewal of eligibility.

Option 1

Under the option we define at § 435.558(b)(3)(i), a State is considered unable to verify compliance with the community engagement requirement when, at the time of the more frequent verification, the reliable information available to the State is insufficient to determine that the individual is a specified excluded individual or that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required under the State plan. When this occurs, the State is considered unable to verify compliance with the community engagement requirement and must provide the beneficiary the notice of noncompliance under § 435.558(c). The associated 30-calendar day period for the beneficiary to make a satisfactory showing of compliance with the community engagement requirement fulfills the requirement in § 435.952(d) to seek additional information from an individual before terminating eligibility on the basis of reliable information received by the State. The State does not need to send a separate request for information prior to sending the notice of noncompliance under this option.

Option 2

Under the second option we define at § 435.558(b)(3)(ii), a State may only be considered unable to verify an applicable individual's compliance with the community engagement requirement after determining that reliable information available to the State is insufficient to verify compliance and following the State's existing procedures under § 435.952(d) to request information from the individual. If the beneficiary does not respond to this request for information or does not provide sufficient information to demonstrate compliance with community engagement, the State must send the notice of noncompliance to the

beneficiary and provide the associated 30-calendar period for the beneficiary to make a satisfactory showing.

At application, renewal, or, if applicable, during a more frequent verification of compliance, verifying compliance with the community engagement requirement and the associated noncompliance procedures represent significant changes to existing eligibility and enrollment processes. States may wish to consider how these changes affect overall timelines and associated workflows at application and at renewal for all beneficiaries and make the necessary adjustments to ensure efficient eligibility and enrollment operations.

3. Content and Timing of the Noncompliance Notice

In § 435.558(c), we specify the content States must include in the notice of noncompliance. Section 1902(xx)(6)(B) of the Act specifies that the notice of noncompliance must include information on how an applicable individual may make a satisfactory showing of compliance with the community engagement requirement or that such requirement does not apply and how the individual may reapply for Medicaid if eligibility is denied or the individual is disenrolled from coverage. In implementing these notice requirements, we are also specifying additional content that must be included in the noncompliance notice to ensure that the individual fully understands the noncompliance process and the consequences of failure to respond. We specify in § 435.558(c)(1)(i) through (vii) that the notice of noncompliance must include clear statements containing the following information:

- How to make a satisfactory showing of compliance with the community engagement requirement, including:
 - Which month(s) will be assessed by the State in accordance with § 435.556(a);
 - How to show the individual demonstrated community engagement under § 435.552; and
 - How to show the individual should be deemed to have demonstrated community engagement as specified in § 435.553 or, if applicable, § 435.555;
 - How to make a satisfactory showing that the community engagement requirement does not apply to the individual on the basis that the individual does not meet the definition of an applicable individual in § 435.551, including because the individual meets the criteria for one or more of the categories of a specified excluded individual under § 435.554;

- The deadline for providing the information under §§ 435.558(c)(1)(i) or (c)(1)(ii) to the State;

- A description of how the information under §§ 435.558(c)(1)(i) or (c)(1)(ii) may be submitted to the State through any of the modalities described in § 435.907(a);

- A description of the consequences of noncompliance with the community engagement requirement and failure to respond to the notice of noncompliance for Medicaid eligibility and eligibility for advance payments of the premium tax credit (APTC) and the premium tax credit (PTC) used to pay for coverage through a Health Insurance Exchange, as provided in section 1903(xx)(7)(B) of the Act;

- How such individual may reapply for medical assistance under the State plan (or a waiver of such plan) if the individual's application is denied or the individual is disenrolled from coverage under the State plan or waiver, as applicable; and

- For States that have elected to provide the short-term hardship exception under § 435.555, the information about short-term hardships described in § 435.555(c).

For consistency with other eligibility-related notices and forms, we specify that the notice of noncompliance must be provided consistent with § 435.905(b) in § 435.558(c)(2), and we further specify that, if provided in electronic format, the notice must comply with § 435.918(b) in § 435.558(c)(3).

In § 435.558(c)(4), we specify when an individual is considered to have received notice of noncompliance for the purpose of determining when the 30-calendar day period begins. We recognize that many individuals receive notices from the Medicaid agency via mail through the U.S. Postal Service, and States may not know when an individual receives a notice as mail delivery times vary or circumstances may prevent an individual from receiving their delivered mail. We consider the notice of noncompliance to be received 5 days after the date on the notice, unless the applicant or beneficiary shows that he or she did not receive the notice within the 5-day period. For example, an individual might not receive the notice in this timeframe if the individual is hospitalized, the individual's mail is on hold, or the individual was away from home. This is consistent with established timelines for receipt of a notice of action (in § 431.231(c)(2)) and of an adverse local evidentiary hearing decision (in § 431.232(b)).

4. State Responsibilities When There Is No Satisfactory Showing of Compliance

In § 435.558(d), we describe States' responsibilities when an applicable individual does not make a satisfactory showing of compliance with the community engagement requirement after receiving the notice of noncompliance, consistent with section 1902(xx)(6)(A)(iii)(I) of the Act. We specify at § 435.558(d)(1) that the State must consider all bases of eligibility prior to determining an applicable individual is ineligible consistent with §§ 435.911 and 435.916(f). Federal regulations in § 435.911(c)(2) and (d)(1), in turn, require that if a State has any information that indicates the individual is potentially eligible for a non-MAGI eligibility group, the State must collect the needed additional information to determine eligibility for Medicaid on any non-MAGI basis. If the State determines the individual is eligible on another basis, the State must enroll the individual in such group. Thus, consistent with these existing requirements, as part of the community engagement noncompliance procedures, States must evaluate an individual's eligibility for Medicaid on all bases before making a determination that an individual is ineligible for Medicaid.

At § 435.558(d)(2), we specify that States must deny eligibility or disenroll an applicable individual from coverage when the individual does not make a satisfactory showing to demonstrate compliance with the community engagement requirement. As with other decisions affecting an individual's eligibility, the State must provide written notice (including at least 10 days advance notice in the case of an eligibility termination or reduction) and grant the individual an opportunity for a fair hearing in accordance with §§ 435.917 through 435.918 and 42 CFR part 431, subpart E. For applicants, we specify at § 435.558(d)(2)(i) that States must deny the individual's application and provide written notice and fair hearing rights consistent with §§ 435.917 through 435.918 and 42 CFR part 431, subpart E. For beneficiaries, at § 435.558(d)(2)(ii), we implement the requirement in section 1902(xx)(6)(A) of the Act to disenroll individuals from coverage who are determined ineligible under the State plan (or waiver of such plan) on all bases not later than the end of the month following the month in which the 30-calendar day period ends and after the provision of advance notice and fair hearing rights consistent with §§ 435.917 through 435.918 and 42 CFR part 431, subpart E. While § 435.558(d)(2)(ii) sets an outer bound

for when an individual who does not make a satisfactory showing must be disenrolled, it does not change the requirement for States to conduct periodic renewals of eligibility consistent with section 1902(e)(14)(L) of the Act and § 435.916, and therefore, the time frame to complete the disenrollment should not be used as a waiting period to provide coverage beyond the end of an individual's eligibility period.

In § 435.558(d)(2)(iii), we require that the notice under § 435.558(d)(2)(i) and (ii) must include a clear statement of the specific reasons supporting the denial or disenrollment, as appropriate, which explains that the applicant or beneficiary failed to:

- Make a satisfactory showing of compliance with the community engagement requirement under § 435.552, including by meeting the criteria for an exception to be deemed as demonstrating community engagement under § 435.553 or, if applicable, § 435.555, for the month(s) specified in accordance with § 435.556(a); and
- Make a satisfactory showing that the community engagement requirement does not apply to the individual on the basis that the individual does not meet the definition of applicable individual in § 435.551, including failure to demonstrate the individual meets the criteria for one or more of the categories of a specified excluded individual under § 435.554.

For both applicants whose application is denied and beneficiaries who are disenrolled from coverage, we specify in § 435.558(d)(2)(iv) that the State must determine the individual's potential eligibility for other insurance affordability programs in accordance with § 435.1200(e).

5. Reenrollment and Reconsideration Periods

Section 1902(xx)(6) of the Act does not change the requirements related to an individual's ability to reapply for coverage or the steps States must take when processing applications under § 435.907 and renewals under § 435.916. As such, in § 435.558(e), we provide that States must not impose any restriction on an applicable individual's ability to re-apply for coverage or their ability to receive coverage if determined eligible upon reapplication based on the applicable individual's prior denial of eligibility or disenrollment for noncompliance under § 435.558. Consistent with sections 1902(a)(8) and (a)(10) of the Act, States must also furnish benefits to eligible applicable individuals with reasonable promptness

and in accordance with the State plan (or waiver of such plan), regardless of a prior denial of eligibility or disenrollment for noncompliance under § 435.558. States must not impose a "waiting period" or "lock-out period" following the denial or disenrollment for noncompliance with the community engagement requirement, as such practices would impermissibly prevent applicable individuals from applying for coverage or from receiving coverage for which they are eligible, and therefore violate these statutory requirements.

We also recognize that, as with the renewal form, some beneficiaries may not return information requested in the notice of noncompliance. We specify in § 435.558(f) that States must provide a reconsideration period consistent with § 435.916(a)(3)(iii) for individuals enrolled on a MAGI basis who were disenrolled for failure to submit information requested in the notice of noncompliance and subsequently submit the requested information during the reconsideration period. States have the option to provide a reconsideration period to individuals enrolled on a basis other than MAGI. During the reconsideration period, the information or documentation requested in the notice of noncompliance is treated as an application, and the date on which the individual returns the requested information or documentation is considered the date of application.¹⁰⁶ For individuals subject to community engagement who return their renewal form or information requested in the notice of noncompliance during the reconsideration period, States must follow procedures for assessing compliance with community engagement at application, as provided in § 435.556(a)(1). Such applicable individuals are required to have demonstrated or be deemed to have demonstrated community engagement in the month prior to the date of the application, or additional consecutive months, as elected by the State under § 435.556(a)(1).

6. Noncompliance Procedures and Ensuring Timely Eligibility Determinations at Application

Federal regulations in § 435.912 require States to complete eligibility determinations for Medicaid promptly and without undue delay. In general, the determination of eligibility for any individual may not exceed 90 days for applicants who apply on the basis of

disability and 45 days for all other applicants, which includes individuals whose eligibility is being determined based on MAGI. The regulations specify that the timeliness standards cover the period from the date of application or transfer from another insurance affordability program to the date the State notifies the applicant of its decision.

New § 435.558(a) imposes an additional requirement on States to provide notice of noncompliance to an applicable individual who the State is unable to verify as being compliant with the community engagement requirement and to afford such individual 30 calendar days from the date they receive the notice to demonstrate community engagement or that they should be deemed to demonstrate community engagement, or establish that they do not meet the definition of an applicable individual, which States must account for when making determinations of eligibility.

We believe the 45-day timeliness standard under § 435.912 for MAGI beneficiaries is necessary to prevent delays in applicants' eligibility determinations. We also recognize that the 30-calendar day period that must be provided to individuals who receive a notice of noncompliance may make it difficult for States to comply with such timeliness standard requirements. For example, instances may arise where the 30-calendar day period that must be provided to applicable individuals following the receipt of a notice of noncompliance at application extends beyond the 45-day timeframe even if the State acts promptly to process the application. Based on anecdotal information through our work with States, we believe States ordinarily provide less than 30 days for the applicant to respond to any requests for information in order to meet the 45-day timeliness standard to make determinations of eligibility for applicants. Therefore, we are adding § 435.912(e)(3) to provide a new exception to the timeliness standard at § 435.912(c)(3)(ii) for applicants who receive the notice of noncompliance under § 435.558(a) and when the State is unable to meet the 45-day timeliness standard due to the required 30-calendar day period discussed in this section of this IFC. When a State uses this exception, it must do so on a case-by-case basis and document the reason for the delay in the applicant's case record as required by § 435.912(f).

We acknowledge that depending on States' systems and operational capacities, as well as the timing of an individual's response, the required 30-

¹⁰⁶ CMCS Informational Bulletin, "Medicaid and Children's Health Insurance Program (CHIP) Renewal Requirements," (December 4, 2020), pg. 7, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib120420.pdf>.

calendar day period for applicants to return information related to community engagement will not always result in a delay in completing a determination of eligibility for an applicable individual who is sent a notice of noncompliance at application. States that can make a timely determination of eligibility for applicants who are sent a notice of noncompliance must do so within the timeliness standards. However, we understand that not all applicants will respond to the notice early in the 30-calendar day period, and that when the applicant has not responded to verify compliance with the community engagement requirement until the end of the 30-calendar day period, States may be unable to notify the applicant of an eligibility decision within the 45-day timeliness standard. We believe the exception at § 435.912(e)(3) is necessary to prevent States from being subject to compliance action for failure to meet the regulatory timeliness standard as a result of complying with section 1902(xx) of the Act. We also seek to ensure that States take necessary steps to continue to make timely and accurate determinations of eligibility to the greatest extent possible.

Consistent with existing requirements in § 435.912(g)(1), we expect States to complete their initial eligibility determinations as quickly as possible and not use the maximum period available under the timeliness standard to delay the initiation of coverage for individuals who would otherwise be determined eligible and enrolled more quickly. We expect States to use the new exception in those cases where the State would have made the determination within the timeliness standard at § 435.912(c)(3)(ii) but was unable to do so because the State was required to give the individual the full 30-calendar day period at § 435.558(a)(2), and the individual did not respond to the notice sufficiently early in this 30-calendar day period to enable the State to meet the timeliness standard.

The new exception is only available if a State is unable to process an application timely for applicants to whom the State is required to send the notice of noncompliance because the State is unable to verify whether such individual is a specified excluded individual or whether the individual demonstrated or should be deemed to demonstrate community engagement. The exception may not be used when a State sends a request for information that is not related to the notice of noncompliance, such as for Medicaid applications for applicants who are not

applicable individuals or for CHIP or BHP applications. As such, we make corresponding revisions to §§ 457.340(d)(1) and 600.320(b) to specify that the exception added by this IFC in § 435.912(e)(3) does not apply to CHIP and BHP applications.

7. Impact of Noncompliance and Eligibility for Financial Assistance for Coverage on a Health Insurance Exchange

Section 1902(xx)(7)(B) of the Act specifies the effect of noncompliance with the community engagement requirement as it relates to eligibility for financial assistance for coverage on a Health Insurance Exchange. An individual who is eligible for Medicaid coverage that provides MEC is generally not eligible for advance payments of the premium tax credits (APTC) and the premium tax credit (PTC) used to pay for coverage through a Health Insurance Exchange. Under section 1902(xx)(7)(B) of the Act, for purposes of section 36B(c)(2)(B) of the Code, an individual is deemed to be eligible for MEC for a month if the individual would have been eligible for Medicaid but for their failure to meet the community engagement requirement. As such, an applicable individual who does not demonstrate community engagement or is not deemed to have done so, who would otherwise be eligible for Medicaid coverage under the State plan (or waiver), is precluded from eligibility for APTC and PTC. We expect to issue operational guidance regarding how States should coordinate with exchanges, to ensure proper implementation of this provision.

K. Implementation Timing

Section 1902(xx) of the Act requires States to establish a community engagement requirement for certain individuals enrolled in or applying for Medicaid. Section 1902(xx)(1) of the Act requires that beginning no later than January 1, 2027, unless granted a good faith effort exemption under section 1902(xx)(11) of the Act and § 435.560, State Medicaid agencies must require “applicable individuals,” defined in detail in section II.B. of this IFC and § 435.551, to demonstrate community engagement or be deemed to have demonstrated community engagement as a condition of eligibility. A State has the option to implement the community engagement requirement before January 1, 2027, either under the State plan or a section 1115 demonstration. These requirements apply to both individuals applying for Medicaid and individuals enrolled in Medicaid, as discussed in section II.H of this IFC. This section of

the preamble discusses what is required for States to successfully implement the community engagement requirement in a timely manner, including the systems and capabilities needed to operationalize the community engagement requirement. New § 435.559 implements and interprets the implementation timing of section 1902(xx)(1) of the Act.

1. Implementation Date

We consider a State’s “implementation date” to be the date on which fulfilling the community engagement requirement becomes a condition of eligibility for applicable individuals. As such, applicable individuals who submit an application for medical assistance on or after the implementation date must be required to demonstrate or be deemed to demonstrate community engagement as a condition of eligibility. Beginning on the implementation date, enrolled beneficiaries must demonstrate or be deemed to have demonstrated community engagement as part of periodic renewals of eligibility, or more frequently, if elected by the State. As required at § 435.561(b)(1), States must notify certain individuals of the requirement to demonstrate community engagement before the State’s implementation date. See Table 2 in section II.L of this IFC for a visual representation of outreach timing relative to the implementation date and discussion of the requirement for States to provide certain individuals with notice of the community engagement requirement prior to requiring their compliance therewith.

2. Special Considerations at Implementation

a. Pending Applications and Implementation of the Community Engagement Requirement

Upon implementation, a State will have applications that were submitted before implementation of the community engagement requirement and for which eligibility determinations have not yet been made. These pending applications must be adjudicated according to the policies in place on the date the application was submitted, consistent with § 435.915, which provides that the effective date of Medicaid coverage is based on the date an application is submitted. If applicable individuals included on such an application are determined eligible and enrolled, the State must then apply the new community engagement requirement to these individuals in accordance with requirements for

enrolled beneficiaries discussed in the next section.

As an illustrative example, consider a State that has an implementation date of January 1, 2027. The State requires that an applicable individual demonstrate community engagement in the month before the month of application and does not elect to conduct more frequent verifications of community engagement. An application for medical assistance that is submitted on December 15, 2026, must be adjudicated based on the eligibility rules in place on December 15, 2026, even if an eligibility determination is not made until January 15, 2027 (after the implementation date). Since the community engagement requirement was not in place at the time of application, the State must not evaluate whether the individual is an applicable individual and whether the individual demonstrated community engagement in November 2026, the month before the month of application. If the person is determined eligible and enrolled in Medicaid, then the applicability of the community engagement requirement and the individual's compliance with the requirement will be evaluated as part of the person's next scheduled periodic renewal of eligibility. However, the individual must be notified of the community engagement requirement when they enroll in coverage, in accordance with the outreach requirements in section II.L. of this IFC and § 435.561.

b. Community Engagement Requirement for Enrolled Beneficiaries at Implementation

The requirement for States to consider community engagement compliance as a condition of eligibility no later than January 1, 2027, applies to applicable individuals already enrolled in the State's Medicaid program as of that date, as well as to those newly applying on or after that date who enroll. Further, section 1902(xx)(1)(B) of the Act provides that States must require applicable individuals enrolled in Medicaid to demonstrate community engagement for 1 or more months during the period between the individual's most recent determination of eligibility and their next regularly scheduled redetermination of eligibility. However, the statute does not explicitly state when States must first verify compliance with the community engagement requirement for individuals already enrolled in the State's Medicaid program as of January 1, 2027 (or the earlier implementation date selected by the State). On any given date, a portion of the State's Medicaid population will

be in the process of having their eligibility redetermined as part of required periodic renewals of Medicaid eligibility. As such, all States will have some renewals in progress on the State's community engagement implementation date.

Section 1902(xx)(a)(1) of the Act requires that States "provide, as a condition of eligibility for medical assistance for an applicable individual, that such individual is required to demonstrate community engagement . . . as part of such regularly scheduled redetermination." The language in the statute is ambiguous for eligibility periods that began prior to a State's implementation date and for which the renewal process is under way on the State's community engagement implementation date. Consistent with other guidance provided to States when applying a change in policy that affects renewals,¹⁰⁷ we interpret section 1902(xx)(a)(1)(B) of the Act to allow States to begin verifying an applicable individual's compliance with community engagement at the first renewal initiated on or after the State's implementation date. A renewal is considered initiated when the State begins reviewing reliable information available to the State in an effort to complete a beneficiary's renewal without requiring a renewal form or other information from the beneficiary in accordance with § 435.916(a)(2) (*ex parte* renewal). We considered whether States should be required to first assess compliance with the community engagement requirement based on the end date of the beneficiary's eligibility period, rather than when the renewal process is initiated; that is, first verifying compliance with community engagement if the end date of the eligibility period occurs on or after the State's implementation date. However, based on discussion with State systems and operational staff, many States have a renewal process that takes between 60 to 90 days. As such, if a State were required to begin verifying compliance for applicable individuals with a renewal due on January 31, 2027, many States would be required to apply the community engagement requirement at renewals initiated as early as November 2026. This would require States to request information about community engagement activity prior to the State's implementation date. We conclude it is a reasonable approach to base the first

required verification of an enrolled beneficiary's compliance with the community engagement requirement on when a renewal is initiated in relation to the State's implementation date.

3. Systems Changes Needed To Implement Community Engagement

To successfully meet the community engagement requirement, States will need to implement multiple interrelated changes to their Medicaid Enterprise Systems (MES), including but not limited to the eligibility and enrollment (E&E) systems (as defined in § 433.111(b)(2)). CMS expects States to continue to enhance their systems after the State's implementation date by expanding the use of electronic data sources to verify qualifying activities, exceptions, and exclusions, automating manual processes, and incorporating operational lessons learned from initial implementation. Additionally, we will engage with States through regular implementation oversight processes, which will include review of monthly project status reports, milestone tracking, technical assistance discussions, regular demonstrations of functionality, and other monitoring activities designed to assess progress toward timely implementation. In particular, we will focus on whether States are making meaningful progress towards systems readiness, identifying and escalating implementation risks in a timely manner, and seeking technical assistance to ensure operational readiness. We will use information obtained through these oversight activities to inform our understanding of State progress, implementation challenges, and whether a State is making continued good-faith efforts toward compliance. We intend to publish more detailed expectations for the features and functionalities, testing, systems demonstrations, and reporting of CMS-required outcomes and metrics in separate forthcoming guidance, as well as discuss monitoring of State progress in implementing the systems changes needed to operationalize the community engagement requirement.

Enhancements, as defined at 45 CFR 95.605,¹⁰⁸ to existing E&E systems and the addition of new connections to electronic data sources to implement the community engagement requirement may trigger periodic review and systems approval or reapproval. In the May 24,

¹⁰⁷ CMCS, State Medicaid Director Letter 26-001, Implementation of "Eligibility Redeterminations," Section 71107 of the "Working Families Tax Cut" Legislation (Pub. L. 119-21), March 6, 2026, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/smd26001.pdf>.

¹⁰⁸ Under 45 CFR 95.605, enhancements are defined as "modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware."

2023, CMCS Informational Bulletin,¹⁰⁹ we explained that the streamlined modular certification framework for MES is structured around conditions for enhanced funding, outcomes, and metrics, and expressly described outcomes and metrics as applying to “a new module or enhancement to an existing module.” In the context of community engagement implementation, States will need to enhance existing eligibility and enrollment functionality, which may include the need to incorporate connections to additional electronic data sources into the existing system.

Under § 433.119, we established a periodic review and reapproval framework focused on continued compliance of the operational system¹¹⁰ initially approved under §§ 433.114 and 433.116 for 75 percent FFP for ongoing operations. Continued compliance refers to confirmation that the system in operation continues to meet applicable Federal requirements and the conditions for enhanced Federal matching rates, as evidenced through operational reports, metric data, and other supporting documentation. We use this framework to assess ongoing system performance and compliance, which does not necessitate a reapproval each time a State enhances an existing CMS-approved system, adds an interface, or incorporates a new data source.¹¹¹ However, based on our assessment of ongoing system performance and compliance, we may determine a need to review and reapprove a State’s entire MES, a particular module or solution, or discrete components of a system to validate whether the system is operating in alignment with applicable Federal requirements.¹¹² As a result, CMS does not require systems to be reapproved because they were modified or enhanced unless indicated by declines in system performance.

Accordingly, where a State modifies an already approved operational system to implement the community engagement requirement, the relevant question for purposes of 75 percent FFP for operations is whether the system, as modified, continues to satisfy the applicable conditions for enhanced operational funding and remains compliant with Federal requirements. Such changes do not, by themselves,

require a separate reapproval solely because existing approved functionality has been enhanced. At the same time, the system remains subject to CMS’s periodic review and reapproval authority under § 433.119, and we may review the system, module, or discrete components, as appropriate, to assess continued compliance. We interpret this framework to apply to enhancements like the incorporation of additional electronic data sources, interfaces, and exchanges that support implementation of the community engagement requirement within an already-approved MES.

Under § 433.116, 75 percent FFP is available for operation of an approved MES module or component when the system meets the applicable operational conditions. Those conditions include, through § 433.116(i), the reporting condition incorporated from § 433.112(b)(15), which requires the production of transaction data, reports, and performance information that contribute to program evaluation, continuous improvement in business operations, and transparency and accountability. CMS explained in the 2023 CIB¹¹³ that States must submit operational reports containing metric data, verification of compliance with the conditions for enhanced Federal matching rates required under §§ 433.112 and 433.116, and other evidence that MES modules meet all applicable requirements for the State’s claimed Federal matching funds. CMS further explained that operational reporting enables monitoring of system performance and functionality and provides ongoing demonstration of continuous achievement of required outcomes.

CMS applies this same requirement to community engagement-related systems changes. In many cases, implementation of community engagement will require States to adjust existing system logic, add reporting and tracking functions, support new beneficiary-facing processes, and establish or refine data exchanges with other entities. Where those changes are made within an existing approved MES module or solution, we interpret the applicable regulations to require the State to continue its operational reporting and metrics in a manner that demonstrates that the system, as modified, remains compliant with the conditions for enhanced funding and continues to operate successfully. We remind States that FFP may be available for systems changes necessary to implement the community engagement requirement, in

addition to the funding provided under the government efficiency grants authorized under WFTC legislation. Accordingly, to the extent a State must design, develop, or install new or enhanced E&E systems (as defined at § 433.111(b)(2)) to implement the community engagement requirement, such activities may be eligible for 90 percent FFP, consistent with § 433.112. To receive enhanced FFP, the State must obtain CMS approval of the applicable advance planning document (APD) prior to incurring expenditures, and the project must meet the conditions of 42 CFR part 433, subpart C and other applicable Federal requirements.

Lastly, we remind States and their vendors to pursue implementation of community engagement-related systems changes in a manner that is timely, operationally practical, and cost-effective in alignment with § 433.112(b)(1). Vendors supporting these efforts should provide best possible pricing, facilitate robust coordination with States, support integration with existing Medicaid Enterprise Systems, and avoid unnecessary customization or other practices that could result in avoidable cost increases or implementation delays. We expect solutions to be scalable, transparent, and designed to promote efficient implementation. States remain responsible for ensuring that procured systems solutions are appropriately scoped, reasonably priced, and aligned with applicable Federal requirements.

4. Good Faith Effort Exemption

As described in section II.K.1. and 2. of this IFC and § 435.559, States must implement the community engagement requirement beginning January 1, 2027, although States may elect an earlier implementation date via a section 1115 demonstration or through a State plan amendment. Section 1902(xx)(11)(A) of the Act provides the Secretary of HHS with the authority to grant States a temporary good faith effort exemption from compliance with timely implementation of the community engagement requirement. Section 1902(xx)(11)(B) of the Act outlines the process for determining whether a State has demonstrated a good faith effort towards compliance with timely implementation, including the criteria that must be considered in the evaluation. Section 1902(xx)(11)(C) of the Act describes the duration of the good faith effort exemption, if granted, along with conditions that may warrant early termination. Section 1902(xx)(11)(D) of the Act includes reporting requirements associated with

¹⁰⁹ CMCS Informational Bulletin, “Medicaid Enterprise Systems Compliance and Reapproval Process for State Systems with Operational Costs Claimed at the 75 Percent Federal Match Rate,” (May 24, 2023), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib052423.pdf>.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹³ Ibid.

an approved good faith effort exemption.

This section of this IFC discusses how a State may request a good faith effort exemption, the criteria by which CMS will evaluate such requests, and the duration and reporting requirements of such exemptions, if granted. New § 435.560 implements and interprets section 1902(xx)(11) of the Act.

a. Process and Timing of Requests

Section 1902(xx)(11)(A)(i) of the Act provides CMS with the ability to specify the form and timing of States' requests for a good faith effort exemption. We expect to issue a template for States to use to submit such requests.

b. Criteria for Good Faith Effort Determination

Section 1902(xx)(11)(B) of the Act outlines the criteria CMS will consider when determining whether a State has demonstrated a good faith effort towards implementing the community engagement requirement. These criteria, which must be addressed in the State's request, include:

1. Any actions taken by the State toward compliance with the requirements of implementing community engagement;
2. Any significant barriers to, or challenges in, meeting such requirements, including related to funding, design, development, procurement, or installation of necessary systems or resources;
3. The State's detailed plan and timeline for achieving full compliance with such requirements, including any milestones of such plan (as defined by the Secretary); and
4. Any other criteria determined appropriate by the Secretary.

Generally, when addressing these criteria, we encourage States to demonstrate the use of standardized and industry accepted project management principles and accountability.

At § 435.560(b)(1), we implement the first criterion, which requires the State to provide any actions it has taken to date towards compliance with timely implementation of the community engagement requirement. We are primarily interested in actions that demonstrate consistent effort and progress towards implementation across multiple overarching domains, such as procurement, policy development, and operational preparations. Examples of actions that fall under these domains may include, but are not limited to, efforts towards: securing funding not already available to the State; passage of State legislation necessary to implement community engagement; developing

necessary State-level guidance, regulations, policies, and procedures; procuring vendors for necessary system and operational changes, as described in section II.K.3 of this IFC (*Systems Changes Needed to Implement Community Engagement*); making preparations to ensure sufficient staffing and training for such staff; establishing a communication plan for beneficiaries and other external interested parties; and engaging in and making use of technical assistance opportunities and resources. We encourage States to provide data on or otherwise quantify the scope of their actions.

In addition to these aforementioned domains and examples, it is also important for a State to identify any actions it has already taken towards identifying risks, notifying CMS of such risks and seeking technical assistance from CMS, if needed, as soon as practicable, developing a risk mitigation plan, and implementing such mitigations.

At § 435.560(b)(2), we implement the second criterion, which requires the State to identify significant barriers or challenges the State has faced towards implementing the community engagement requirement. We recognize the timeframe for implementing the community engagement requirement is limited. Section 1902(xx)(11)(B)(ii) of the Act specifically notes an interest in "significant barriers or challenges related to the funding, design, development, procurement, or installation of necessary systems or resources." In describing barriers or challenges related to necessary systems or resources, a State should reference specific elements in section II.K.3 of this IFC (*Systems Changes Needed to Implement Community Engagement*). To support our understanding of the scope of the barriers and challenges, a State should, where possible, provide data or otherwise quantify the noted barriers and challenges.

At § 435.560(b)(3), we implement the third criterion, which requires the State to provide a detailed plan and timeline for fully implementing the community engagement requirement. The plan and timeline must, at a minimum, include key milestones towards full compliance and planned steps to address any challenges identified by the State as part of its request. The plan and timeline must also provide sufficient detail to allow CMS to meaningfully assess the State's progress over time.

The statute's fourth criterion permits CMS to identify additional criteria for assessing whether a State has demonstrated a good faith effort to implement the community engagement

requirement. At § 435.560(b)(4), we add an additional criterion, that permits CMS to take into consideration any exigent circumstances that States might encounter, such as when there is an administrative or other emergency beyond the State's control, like a cybersecurity incident or natural disaster.

Good faith effort exemptions will be considered on a case-by-case basis and will be approved for States that demonstrate they have a detailed work plan and have been diligently making demonstrable progress on that work plan throughout 2026. In general, as part of any request for a good faith effort exemption, we anticipate providing technical assistance on a State's detailed plan and timeline for achieving full compliance. Additionally, we expect that approvals of good faith effort exemptions will be limited to States that demonstrate meaningful effort towards implementation and experience extraordinary, severe, or unexpected issues that hinder their progress.

c. Duration of Exemption

At § 435.560(c), we implement section 1902(xx)(11)(C), which requires that good faith effort exemptions expire no later than December 31, 2028.

CMS will evaluate each request individually, and if an exemption is granted, determine an appropriate end date for the exemption based on the specific circumstances of the State, as reflected in the State's request and subsequent communication between CMS and the State. The duration of a good faith effort exemption is intended to be short-term in nature, as we expect States to have already made good faith efforts towards timely implementation of community engagement by the time a State submits a request for a good faith effort exemption. Reflecting these considerations, at § 435.560(c)(1), we note that CMS expects to approve initial requests for no longer than 6 months. However, we may grant extensions, until no later than December 31, 2028, provided that the State continues to demonstrate a good faith effort to meet all applicable requirements. We will rely on information reported in accordance with § 435.560(d) to determine if the duration of the good faith effort exemption warrants an extension.

At § 435.560(c)(4), we emphasize that CMS may end an exemption if a State does not meet reporting requirements described at § 435.560(d) or the State no longer demonstrates a good faith effort towards implementing the community engagement requirement.

For the duration of the good faith effort exemption, if granted, CMS will not deem a State to be noncompliant with the requirements of section 1902(xx) of the Act, nor subject the State to corrective actions under section 1904 of the Act, as long as the State meets the reporting requirements and continues to make good faith efforts towards compliance, including by demonstrating continued and consistent progress towards implementation.

d. Reporting Requirements for States Granted Good Faith Effort Exemptions

As a condition of receiving a good faith effort exemption, States must meet reporting requirements described at § 435.560(d), which implements section 1902(xx)(11)(D) of the Act. These reporting requirements have two components: (1) quarterly reports on the status of the milestones the State provided on the detailed plan and timeline for achieving full compliance, per § 435.560(b)(3); and (2) information on specific risks or newly identified barriers or challenges to full compliance, including the State's plan to mitigate such risks, barriers, and challenges. For the first component, we anticipate establishing a deadline for quarterly reporting submissions in future guidance. We interpret that the second reporting component encompasses information the State wishes to make CMS aware of as well as information that CMS requests. The details, form, and cadence of these information requests will be specific to the State's circumstances, and could include requests for data, operational details, and reporting on a more frequent basis. If a State that receives a good faith effort exemption fails to meet these reporting requirements, CMS may end the exemption in accordance with § 435.560(c)(4), and the State may be subject to corrective action under section 1904 of the Act, based on findings that the State failed to comply substantially with section 1902 of the Act in the administration of the State plan.

L. Outreach

Section 1902(xx)(8) of the Act, which we implement at new § 435.561 of the regulation, requires States, to notify enrolled applicable individuals of the requirement to demonstrate community engagement in accordance with standards specified by the Secretary. States must begin this outreach "not later than the date that precedes December 31, 2026, or, if the State elects to specify an earlier date, such earlier date, by the number of months specified by the State at section 1902(xx)(1)(A) of

the Act plus 3 months, and periodically thereafter." Such notices must include information on: (1) how to comply with the community engagement requirement, including an explanation of the exceptions under section 1902(xx)(3) of the Act and the definition of the term "applicable individual" under section 1902(xx)(9)(A)(i) of the Act; (2) the consequences of noncompliance; and (3) how to report to the State any changes to the individual's status that could result in the applicability or end the applicability of an exception under section 1902(xx)(3) of the Act or the individual qualifying as a specified excluded individual defined at section 1902(xx)(9)(A)(ii) of the Act. The outreach notice must be provided through at least two modalities: regular mail (or, if elected by the individual, in an electronic format) and in one or more additional modalities, which may include telephone, text message, an internet website, other commonly available electronic means, and other forms as the Secretary determines appropriate.

The regulations at § 435.905(a) require States to furnish information to all applicants and other individuals who request it about the eligibility requirements, available Medicaid services, and the rights and responsibilities of applicants and beneficiaries. States must furnish this program information in electronic and paper formats, and orally as appropriate. The regulations at § 435.1200(f) also require States to make available to current and prospective Medicaid applicants and beneficiaries a website that supports applicant and beneficiary activities, including accessing information on insurance programs available in the State.

In this section, we establish new § 435.561 to implement section 1902(xx)(8) of the Act. We discuss which individuals the State must notify of the community engagement requirement, how frequently States must conduct outreach, the modalities States must use to provide outreach notices, and how States may coordinate the outreach notice with other notices.

We require States at § 435.561 to notify individuals who are eligible to enroll or are enrolled under § 435.119 of the requirements to demonstrate or be deemed to demonstrate community engagement as required under section 1902(xx) of the Act. In addition to such individuals, States must also notify individuals who otherwise are eligible to enroll or are enrolled in coverage under an applicable section 1115 demonstration. While section 1902(xx)(8)(A) of the Act requires States

to notify enrolled applicable individuals of the community engagement requirement, we believe it is necessary and appropriate to require that the initial and periodic outreach notification be provided to all individuals enrolled in the adult group described at § 435.119 or in an applicable section 1115 demonstration, rather than only to applicable individuals defined at § 435.551, since the status of an individual can change and render one subject to the community engagement requirement. We believe that the required outreach notification and the content of the outreach notification required by section 1902(xx)(8) of the Act contains information relevant to applicable individuals described at § 435.551 and specified excluded individuals described at § 435.554. In addition, we believe States would not be able to determine which enrolled beneficiaries meet the definition of an "applicable individual" at section 1902(xx)(9)(A)(i) of the Act to target the initial outreach notices to such individuals prior to the effective date of the community engagement requirement in the State. We, therefore, did not limit the outreach requirements at § 435.561 to applicable individuals described at § 435.551. However, as we explain below in our discussion of the content of the outreach notice, not every individual who receives an outreach notice will be required to comply with the community engagement requirement. States will need to include clear, consumer-friendly information in the outreach notice to help individuals understand who qualifies for an exception or is a specified excluded individual and that additional actions would not be needed by such individuals to demonstrate compliance.

Under § 435.905(a), States must provide applicants and all other individuals who request it, information on eligibility requirements and the rights and responsibilities of applicants and beneficiaries, which will now include information on complying with the community engagement requirement as a component of the eligibility information. To satisfy this requirement, we also interpret the community engagement outreach requirement at § 435.561(a) to require outreach notices be provided to the affected individual. Section 1902(xx)(8)(A) of the Act states that "the State shall notify applicable individuals enrolled under a State plan (or waiver) under this title of the requirement to demonstrate community engagement." We interpret such requirements to mean that States must

direct the content in the outreach notice specifically to the individuals who must receive the notice rather than to the general public. A general, public notice, such as a web page about the community engagement requirement, would not satisfy the outreach requirement at § 435.561. This targeted approach ensures that affected individuals are aware of the applicability of the community engagement requirement. States must also provide information on eligibility requirements, including community engagement, to all other individuals who request it per § 435.905(a).

We recognize that the general public may not be aware of the forthcoming community engagement requirement in Medicaid, which may affect eligibility for future applicants. States must make program information available on their public website described at § 435.1200(f), which must include information related to community engagement. While we are not requiring States to engage in additional public outreach efforts, we encourage States to consider general public outreach as part of their efforts to implement the community engagement requirement.

These additional public outreach efforts can complement the required outreach notices and raise broader community awareness of the new community engagement requirement. We also encourage States to use existing tools and to partner with interested parties and networks to disseminate resources and offer multiple channels to individuals to learn about and navigate the requirement. These may include but are not limited to aging and disability networks, hospitals, Federally qualified health centers, rural health clinics, provider networks, schools, churches and other religious institutions, managed care plans, and other community-based organizations.

We require States at § 435.561(b)(1) to conduct outreach prior to January 1, 2027, or an earlier implementation date specified by the State in accordance with § 435.559. States that later elect to implement the adult group under § 435.119 must also conduct outreach about the community engagement requirement prior to the effective date of the adult group in the State plan. Similarly, States that implement the community engagement requirement in a section 1115(a)(2) demonstration

project under section 1902(xx)(9)(A)(i)(II) of the Act must conduct outreach prior to the implementation date of the demonstration project expenditure authority. We interpret the statute to require outreach notices to be provided 3 months prior to the date the community engagement requirement becomes effective in the State plus the number of months specified by the State for applicants to demonstrate compliance with the community engagement requirement under § 435.556(a)(1). This will result in States needing to send outreach notices to beneficiaries in the fourth, fifth, or sixth month prior to the date in which the community engagement requirement becomes effective. For example, in States with effective dates of January 1, 2027, States will need to send initial outreach notices in July 2026, August 2026, or September 2026, depending on whether the State elects for applicants to demonstrate they meet the community engagement requirement in the 3 months before, 2 months before, or 1 month before the month in which application is made. Table 2 depicts this and additional examples.

TABLE 2: Example of Outreach Notification Timeframes

Effective Date	Month Outreach Must Occur		
	1 Month to Demonstrate Compliance, Plus 3 Months	2 Months to Demonstrate Compliance, Plus 3 Months	3 Months to Demonstrate Compliance, Plus 3 Months
December 1, 2026	August 2026	July 2026	June 2026
January 1, 2027	September 2026	August 2026	July 2026
July 1, 2028	March 2028	February 2028	January 2028

New § 435.561(b)(1) and (b)(2) require States to send notices to beneficiaries 4, 5, or 6 months prior to the community engagement requirement becoming effective in the State and to send the notices to beneficiaries who apply and enroll after the initial outreach notice is sent but before the community engagement requirement becomes effective in the State. This will ensure beneficiaries who newly enroll in the adult group described at § 435.119 or an applicable section 1115 demonstration will be made aware of the requirement. We also require States to notify all individuals described at § 435.561(a) on a periodic basis thereafter and outline when States must provide outreach notices through at least two modalities on an ongoing basis at § 435.561(d). Under the authority given to the

Secretary to specify standards for outreach notices, we define “periodic basis thereafter” to mean that for individuals described at § 435.561(a), outreach notices must be provided: (1) following a determination or redetermination of eligibility at application, at renewal described at section 1902(e)(14)(L) of the Act and § 435.916, and based on a change in circumstances; (2) when the State elects the short-term hardship exception in the State plan under § 435.555(a); (3) each time a short-term hardship exception relating to an event described at § 435.555(d)(2) becomes available to applicable individuals or the State effectuates the short-term hardship event described at § 435.555(d)(3); (4) when the State reduces a beneficiary’s eligibility and sends advance notice for:

the deselection of the short-term hardship exception under § 435.555(a); the anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3); and the loss of a beneficiary’s specified excluded individual status under § 435.554; and (6) upon request by CMS, if State-reported monitoring data described at § 435.562 or other information indicates a need for increased outreach or a potential compliance issue with §§ 435.550 through 435.562, consistent with § 435.562(e). We believe this will allow States to align outreach notices with eligibility determination notices under § 435.917, since States must already provide information to individuals about their eligibility and rights and responsibilities. For example, States may align such notices by

combining the content of the outreach notice with the eligibility determination notice or send a separate outreach notice when an eligibility determination notice is issued. We also believe this approach will allow States to keep individuals updated about changes in the State's short-term hardship exception policy with less burden by utilizing the outreach process already required by section 1902(xx)(8) of the Act. Finally, we believe that this will allow States to provide additional outreach, if requested by us, when States' community engagement monitoring data indicate potential problems or concerning trends, such as if a State is experiencing large shifts in month-over-month determination and redetermination outcomes, or greater disenrollments for procedural denials compared to other States. For more information about the monitoring data States must submit and about our approach to identifying potential compliance issues that could result in additional outreach, see section II.O. of this IFC. While we are requiring States to conduct ongoing, periodic outreach each time an individual described at § 435.561(a) is provided an eligibility determination notice, States may choose to conduct additional outreach to individuals on an ad hoc or routine basis.

We considered defining outreach on a "periodic basis thereafter" to mean that States must conduct outreach upon enrollment for applicants determined eligible and at least every 6 or every 12 months thereafter for beneficiaries described at § 435.561(a) to provide a consistent time frame for all beneficiaries to receive outreach. While such a definition would provide consistency for all individuals and across all States, we recognize this could result in outreach that may not be meaningful as it was not necessarily aligned with the timing of the eligibility information that must already be provided when someone receives an eligibility determination notice. We also considered specifying when States should conduct periodic outreach in 2027 and 2028 or the first two years of implementation and then later permitting States to determine how frequently periodic outreach should occur after the first few years of implementation. While this would allow States to determine when it would be most effective to conduct outreach, we were concerned that this may increase the likelihood that CMS would need to request additional outreach based on monitoring data if States did not conduct outreach frequently

enough. We seek public comment on whether CMS should establish a different frequency for periodic outreach. We also seek public comment on whether we should allow States to define what it means to conduct outreach on a "periodic basis" in the future.

At § 435.561(c), we require that outreach notices must be provided in a manner consistent with § 435.905(b), to align with requirements for all other program information and notices. To align with section 1902(xx)(8)(A) of the Act and ensure that individuals are notified of their rights and responsibilities in accordance with § 435.905(a), we also specify that the notice content must inform individuals of the following three types of information:

1. How to comply with the requirement to demonstrate community engagement as described at § 435.561(c)(1). This includes: (1) an explanation of the exceptions, including short-term hardship exceptions, if elected by the State; (2) who is an applicable individual, including an explanation of exclusions from such definition under § 435.554; (3) the number of months an applicable individual is required to demonstrate community engagement during the review period at renewal; and (4) if elected by the State, how frequently the State will periodically verify community engagement in between renewals.

2. The consequences of noncompliance with the community engagement requirement on eligibility for Medicaid and for APTC and PTC used to pay for coverage on a Health Insurance Exchange.

3. How to report to the State any change in the individual's status that could result in someone qualifying or no longer qualifying for an exception, short-term hardship, or being considered a specified excluded individual described at § 435.554.

As part of describing how to comply with the community engagement requirement, States must include information about how an applicable individual may demonstrate compliance with community engagement as required under Section 1902(xx)(2) of the Act and described further in section II.C. of this IFC. This includes providing information on the types of activities that demonstrate community engagement, such as types of community service activities that count towards the community engagement requirement. The outreach notices must provide clear, consumer-friendly information to help individuals

understand if they qualify for an exception to the community engagement requirement (which means they will be deemed compliant) or if they are a specified excluded individual (in which case, they would not be required to demonstrate compliance). Some individuals, particularly family caregivers or those who are medically frail, may not identify themselves as meeting an exception or exclusion if the State does not provide clear communication about how the exceptions and exclusions are defined. For individuals who qualify as specified excluded individuals, States will also need to clearly communicate that for such individuals, additional actions to demonstrate compliance are not required at that time.

Additionally, we remind States that while the outreach notice must inform individuals how to report changes in their status, a change is not necessarily a change in circumstances that may affect the individual's eligibility, as discussed in section II.H.3.d. of this IFC. States must accept updated information from beneficiaries the same way they would accept other information reported by the beneficiary even if it does not impact eligibility, such as a change of an in-State address.

We require States at § 435.561(d)(1) to provide the outreach notice by regular mail or, if elected by the individual, in an electronic format consistent with § 435.918. If an individual has elected to receive notices and communications electronically, the State must post the outreach notice described at § 435.561(d)(1) via the individual's preferred electronic format. We specify at § 435.561(d)(2) that outreach notices must also be provided in at least one or more additional modalities, which means the individual must receive their outreach notification via at least two different modalities, including via the individual's electronic account, by telephone, by text message, or through other commonly available electronic means. For an individual who elected to receive electronic notices and communications consistent with § 435.918, the State cannot use that same electronic modality as the additional modality to satisfy the requirement at § 435.561(d)(2). For example, if a State posts the outreach notice to an individual's electronic account consistent with § 435.561(d)(1) and as elected by the individual, the additional modality for the additional notice at § 435.561(d)(2) cannot also be the individual's electronic account. At this time, we have not identified any specific commonly available electronic means through which States may send

an outreach notice, nor do we prescribe any additional modalities for States in this IFC.

We interpret the “internet website” modality at section 1902(xx)(8)(B)(ii) to mean the individual’s electronic account available through an internet website, as opposed to the State agency’s public facing website. As stated earlier in this section, we interpret that the outreach notices required by section 1902(xx)(8) of the Act must be targeted to the individual rather than the general public. For individuals who do not have an electronic account, the State must use a different modality to satisfy the requirement at § 435.561(d)(2), which may include telephone, text message, or other commonly available electronic means. States are reminded that general program information, including the community engagement requirement, must be separately posted to the State agency’s websites in accordance with § 435.905(a).

Section 1902(xx)(8) of the Act does not preclude States from including the outreach notice described in this section or incorporating the content of the outreach notice in another notice or communication that the State provides to the individual. For example, States may include the outreach notice content with the eligibility determination notice provided when an individual is redetermined eligible at renewal. This would meet the State’s requirement for periodically notifying an individual of the community engagement requirement when an individual redetermined eligible at renewal. As such, we specify at § 435.561(e)(1) that States may include the outreach notice required at § 435.561(a) with an eligibility determination notice described at § 435.917 or with other communication from the State to the individual.

Section 1902(xx)(8) of the Act does not limit State flexibility to use managed care plans¹¹⁴ to assist in the administrative activity of providing an outreach notice “in one or more additional forms.” In 2024, over 80 percent of all Medicaid beneficiaries received some or all of their covered services through a managed care plan.¹¹⁵ To ensure that the outreach notices are provided timely and

consistently, we believe that States may find it beneficial to utilize their managed care plans to assist with providing the periodic outreach notices in one or more of the additional modalities specified at § 435.561(d)(2). We permit States at § 435.561(e)(2) to utilize managed care plans to provide the outreach notice periodically, consistent with § 435.561, through one or more of the modalities described in paragraph § 435.561(d)(2). States that elect to do this are expected to direct their managed care plans on which individuals must receive the outreach notice, how frequently such individuals must receive such notice, and the exact content of such notice as required under § 435.561. Section II.M. of this IFC provides additional information about the roles managed care plans can play in helping States accurately implement and ensure compliance with the community engagement requirement, as well as the activities that managed care plans are prohibited from participating in.

M. Managed Care Implications

As discussed in section II.L. of this IFC, managed care plans can play an important role in helping States accurately implement and ensure compliance with the community engagement requirement. States may elect to utilize their managed care plans to provide or enhance certain activities that leverage their plans’ relationship with their enrollees to maximize the effectiveness and timeliness of the activity. For example, States could use their managed care plans to conduct outreach and educate Medicaid managed care enrollees on the community engagement requirement or to share data they possess about enrollees with the State to inform States’ determination of the applicability of the community engagement requirement to specific enrollees. We believe data sharing will be particularly critical for ensuring that States have the most current information on enrollees’ circumstances such as medically frail status or drug addiction or alcoholic treatment and rehabilitation program participation.

States can also allow managed care plans to refer or provide Medicaid managed care enrollees with additional services and assistance, although many such services and assistance (including all the examples included in this paragraph) cannot be considered in the development of capitation rates. For example, managed care plans could refer managed care enrollees to work programs sponsored by States or Federal government agencies that are

administered at American Job Centers. As discussed in section II.C.3. of this preamble, our regulation at § 435.552(b) defines a “work program” as one that meets the definition in section 6(o)(1) of the Food and Nutrition Act of 2008. For an employment and training program under subsection (d)(4) of the Food and Nutrition Act of 2008, supervised job search or job search training is permitted as a subsidiary activity, as long as the job search activity is less than half of the required hours. Generally, Medicaid-covered employment services are not work programs that meet this definition. We believe that some managed care plans may undertake a variety of enrollee outreach and education processes. For example, managed care plans could provide education on work program appointment preparation and document collection, establish feedback loops with work programs to enable managed care plans to follow up with enrollees. We encourage managed care plans to ensure that any activities or services provided align with the community engagement requirement and meaningfully help enrollees who are applicable individuals meet the community engagement requirement. While the costs for these types of activities cannot be included in the development of capitation rates nor counted as value-added services, if plans voluntarily elect to provide services that meet the definition of a value-added service under § 438.3(e)(1), the services could be included in the medical loss ratio (MLR) numerator as incurred claims.¹¹⁶

Many States may expand existing work programs or develop new ones that comply with our definition at § 435.552(b), which incorporates the definition in section 6(o)(1) of the Food and Nutrition Act of 2008, to help enrollees meet the community engagement requirement. Many States may also be working with institutions of higher education to develop new, high-quality, short-term training programs that may be eligible for Pell grants under the newly expanded program pursuant to title VIII, subtitle D of the WFTC legislation. We encourage managed care plans to collaborate with States to determine what role they could play to support States’ efforts. At a minimum, managed care plans should ensure that any activities or services that they implement related to community engagement are consistent with and promote work programs that comply with our definition at § 435.552(b).

While partnering with managed care plans to enhance a State’s

¹¹⁴ As used in this document, “managed care plan” means a managed care organization (MCO), prepaid inpatient health plan (PIHP), or prepaid ambulatory health plan (PAHP), as defined in § 438.2.

¹¹⁵ “Medicaid Managed Care Enrollment and Program Characteristics, 2024.” CMS <https://www.medicare.gov/medicaid/managed-care/downloads/2024-medicare-managed-care-enrollment-report.pdf>.

¹¹⁶ 42 CFR 438.8(e)(2)(i)(A).

implementation of the community engagement requirement may be an effective mechanism, certain Federal requirements (including § 438.5(e)) limit what can be included in the non-benefit component of capitation rates. When costs for administrative activities are included within a capitation payment, expenditures are matched at the Federal Medical Assistance Percentage (FMAP),¹¹⁷ which is typically higher than the Federal match rate for State administrative activities in support of the State plan. States cannot delegate activities to managed care plans that are unrelated to the provision of Medicaid-covered services, in accordance with the contract established between the State and managed care plan that is reviewed and approved by CMS under § 438.3(a), or other activities that would be unreasonable to include in capitation rates that are eligible for FMAP. For example, States cannot delegate activities to conduct tracking or information gathering that are not related to the provision of Medicaid-covered services, such as the collection of information on work, community service, or education activities. States would also not be able to use their managed care plans to issue formal notifications to Medicaid beneficiaries regarding noncompliance with the community engagement requirement. States and their actuaries must ensure that any costs associated with the non-benefit component of a capitation rate complies with all Federal requirements, including §§ 438.4 and 438.5.

Section 71119(c) of the WFTC legislation provides a conflict-of-interest safeguard that explicitly prohibits States from using certain entities, including Medicaid managed care entities,¹¹⁸ to determine enrollee compliance with the community engagement requirement. To implement this prohibition, we are amending § 438.58. We redesignate the current text at § 438.58 as paragraph (a) and add a new paragraph (b). In new paragraph (b), we specify that a State may not use an MCO, PIHP, PAHP, or other contractor to determine beneficiary compliance with the community engagement requirement in part 435, subpart F of this title, unless the entity is not, and has no direct or indirect financial relationship with, an MCO, PIHP, or PAHP that is responsible for providing or arranging for covered services for individuals enrolled with it under its contract with the State. This provision is consistent with conflict-of-interest protections applied to enrollment brokers and their

subcontractors as specified at § 438.810(b)(2)(i). We believe this prohibition is an important safeguard to prevent program integrity concerns in the implementation of the community engagement requirement. Additionally, we remind States that under sections 1902(a)(4) and (a)(5) of the Act and implementing regulations in § 431.10, determining Medicaid eligibility may be delegated only to governmental agencies that maintain personnel standards on a merit basis.

N. Additional Considerations

1. Implications of Community Engagement on Presumptive Eligibility and Presumptive Eligibility Determined by Hospitals

Sections 1920, 1920A, 1920B, and 1920C of the Act provide States with the option to designate “qualified entities” who are able to make presumptive eligibility (PE) determinations for pregnant women, children, certain breast and cervical cancer patients, and family planning services. States that have adopted this policy for children or pregnant women have the option to extend it to certain other groups covered under the State plan, including the adult group, under section 1920(e) of the Act (implemented at § 435.1103(b)).

Section 1902(a)(47)(B) of the Act provides that all hospitals enrolled as a Medicaid provider may elect to be a qualified entity able to determine PE for Medicaid, subject to the same procedures and requirements as are applied to determinations by qualified entities of PE for pregnant women, children, or certain breast and cervical cancer patients, whether or not the State has elected to designate qualified entities to make PE determinations for any such individuals. We refer to the option provided to hospitals as “hospital presumptive eligibility” (HPE). States that cover the adult group in the State plan must allow HPE for this group (§ 435.1110(c)(1)).¹¹⁹ States may allow hospitals to determine PE for other groups approved under the State plan, or those whose eligibility is established by section 1115 demonstration authority (§ 435.1110(c)(2)).

Section 1902(xx)(1) of the Act establishes a new condition of eligibility

for applicable individuals in the State plan adult group or those eligible for or enrolled under a waiver of such plan. Specifically, a State shall provide, as a condition of eligibility for medical assistance for an applicable individual, that such individual is required to demonstrate or be deemed as demonstrating community engagement. Section 1902(xx)(2) of the Act, implemented at § 435.552, sets out the qualifying activities that an applicable individual can use to meet the community engagement requirement. Section 1902(xx)(3)(A) of the Act establishes mandatory exceptions for certain applicable individuals implemented at § 435.553. Section 1902(xx)(3)(B) of the Act provides States the option to offer short-term hardship exceptions, implemented at § 435.555. Both mandatory and optional short-term hardship exceptions would deem an applicable individual as demonstrating community engagement. Section 1902(xx)(9) of the Act defines specified excluded individuals, who are not applicable individuals and are not subject to the community engagement requirement, implemented at § 435.554.

The community engagement requirement applies when an individual completes a full Medicaid application and when an individual applies for PE and HPE and appears to be eligible in the adult group. If a State has elected to cover a section 1115 demonstration population in HPE, and that population includes applicable individuals, the community engagement requirement applies to those HPE determinations as well. Therefore, all HPE programs in States that have adopted the adult group, that have elected the option to cover a section 1115 demonstration population that includes applicable individuals, and that have elected optional PE programs for the adult group will need to include the community engagement requirement as a factor of eligibility in the PE determination. For those individuals who appear to be eligible in the adult group or in an applicable section 1115 demonstration population, qualified entities must assess and obtain an attestation as to whether the individual appears to be a specified excluded individual (at § 435.554), an applicable individual, or meets a mandatory or optional exception (at §§ 435.553 or 435.555, respectively). The State determines if someone is a specified excluded individual or an applicable individual based on the month of application, as a State does when evaluating other factors of eligibility (§ 435.554). If the applicant is an

¹¹⁷ 42 CFR 438.812.

¹¹⁸ Section 1903(m)(9)(D) of the Act.

¹¹⁹ States may allow hospitals to determine presumptive eligibility for other groups, such as those whose eligibility is established by section 1115 demonstration authority. If the population in the section 1115 demonstration includes applicable individuals and the State elects to cover PE/HPE for this demonstration population in the State plan; the State must follow the same guidance as laid out in this section as it relates to the adult expansion population and PE/HPE.

applicable individual (thus does not meet any specified excluded individual criteria) and does not qualify for a mandatory or, if applicable, optional exception, the qualified entity must assess whether the applicant demonstrated community engagement prior to the month of application for the number of months elected by the State, as specified in the State plan and defined at § 435.556.

The new requirement to condition Medicaid eligibility on demonstrating community engagement or being deemed as demonstrating community engagement because of an exception only applies to applicable individuals, and not to those who are specified excluded individuals. As described in detail at § 435.556, applicable individuals must demonstrate or be deemed as demonstrating community engagement at least 1 but not more than 3 consecutive months, as specified by the State, immediately preceding the month of application. Therefore, an applicable individual who applies for PE or HPE must attest they demonstrate community engagement, at a minimum for the month prior to the PE or HPE application, and up to 3 consecutive months prior at State option or qualify for an exception for those month(s) which deems them as demonstrating community engagement. Those that meet the criteria to be a specified excluded individual are demonstrated in the month of application.

Due to the new requirement, States will need to update PE and HPE training materials, train qualified entities on the requirement, and update PE and HPE application materials, including eligibility determination notices, to capture this information. These updates should include information on how providers can assess who is an applicable individual and who is a specified excluded individual. Once that is determined, providers will need to determine if an applicable individual meets exception criteria. In addition, applicable individuals who do not qualify for an exception must then be screened to identify the ways in which they may have demonstrated community engagement. The new questions should only be requested of those who appear eligible in the adult group or, if applicable, a section 1115 demonstration population that includes applicable individuals in a State that has elected to cover that group in HPE, and who could be considered an applicable individual. Determinations of PE and HPE, including whether an individual is a specified excluded individual or demonstrates or is deemed to have demonstrated the community

engagement requirement, must continue to be based on attested information from the applicant per sections 1920, 1920A, 1920B, 1920C, and 1902(a)(47)(B) of the Act.

2. Additional Considerations for Section 1115 Demonstrations

As further described in section II.B. of this IFC, populations eligible for or enrolled in specific demonstration coverage authorized by an expenditure authority under section 1115(a)(2) of the Act that provides MEC to individuals who are at least 19 and under 65 years of age, are not pregnant, are not entitled to or enrolled for benefits under Medicare part A or part B, and are not otherwise eligible to enroll under the State plan, may qualify as applicable individuals and would be subject to the community engagement requirement (unless they are specified excluded individuals). Section 1902(xx)(10) of the Act further specifies that waiving the community engagement requirement under section 1115(a) of the Act is prohibited. We will not approve a section 1115 demonstration project that waives, in whole or in part, the new community engagement provisions of section 1902(xx) of the Act. Furthermore, any State seeking to implement the community engagement provisions of section 1902(xx) of the Act through section 1115 demonstration authority must ensure compliance with each of the requirements of section 1902(xx) of the Act. These limitations are implemented at § 435.563.

O. Monitoring

Section 1902(a)(6) of the Act and implementing regulations at § 431.16 require States to submit all reports required by the Secretary, in such form and containing such information as instructed by the Secretary, and to comply with provisions necessary to assure the correctness and verification of such reports. In addition, section 1902(a)(75) of the Act requires States to submit a report that contains any other data reporting determined necessary by the Secretary to monitor enrollment and retention of individuals eligible for medical assistance under the State plan or under a waiver of the plan. Under section 1904 of the Act, the Secretary may take corrective action to limit Federal payments, after reasonable notice and opportunity for hearing, based on findings that the State failed to comply substantially with section 1902 of the Act in the administration of the plan. We interpret the statutory requirements in sections 1902(a)(6) and (a)(75) of the Act to provide authority to require States to submit data that allow

for monitoring of their eligibility and enrollment processes. Under these authorities, States already routinely submit eligibility and enrollment data to CMS on a monthly, basis through three established data collection efforts: the Medicaid and CHIP Performance Indicator (PI) data, the Medicaid and CHIP Eligibility Processing (EP) data, and the Transformed Medicaid Statistical Information System (T-MSIS) data. These data sets provide CMS, States, and the public increased insight and transparency into State Medicaid and CHIP eligibility and enrollment operations, and the data allow CMS to identify potential compliance or program integrity issues to rapidly engage with State agencies.

As described in this IFC, the community engagement requirement under section 1902(xx) of the Act will impact eligibility and enrollment for those subject to it, and we believe that States' processing of eligibility and enrollment actions for all other applicants and beneficiaries may be indirectly impacted as States implement requirements in this IFC to verify that an individual demonstrates or is deemed as demonstrating community engagement or is a specified excluded individual. Under authority in sections 1902(a)(6) and (a)(75) of the Act, we are requiring in this IFC at § 435.562 that States submit timely, complete, and accurate data (data of sufficient quality) to support monitoring of State eligibility and enrollment operations concerning the implementation and impact of the community engagement requirement. This data reporting will assist CMS to maintain high levels of program integrity to ensure States implement the community engagement requirement under section 1902(xx) of the Act and maintain timely and accurate determinations and redeterminations of eligibility for all applicants and beneficiaries.

To the extent possible, we will develop a community engagement report using existing data elements reported by States through the PI, EP, and T-MSIS data collection efforts, and States will use the same submission portals currently used for any modified or new data collection gathered through the PI, EP, and T-MSIS data sets. We anticipate that there will be a need to modify existing data elements in these data sets or create new, additional data elements in key categories described further in this section to capture data that reflect activities associated with implementation of and the impact of the community engagement requirement. While this IFC outlines the requirement for States to submit data for monitoring

of the community engagement requirement, we will notify States of any specific updates to existing data elements or new data elements through existing PI, EP, and T–MSIS communications for these data collection efforts and related data dictionaries or technical specifications documents. In addition, any modified or new data elements to these existing data collection efforts will be subject to public review and comment processes established under the Paperwork Reduction Act.

We expect States to report timely, complete, and accurate data to monitor community engagement, and in this IFC at § 435.562(b), we define terms that describe how States must submit data and ensure the quality of data collected that will be used to monitor community engagement under section 1902(xx) of the Act. We define the term “timely,” at § 435.562(b)(1) to mean that all data for community engagement monitoring are submitted according to the cadence and not later than the deadline specified by CMS. We define the term “complete” at § 435.562(b)(2) to mean that all required community engagement data are reported by the State. We define the term “sufficient quality” at § 435.562(b)(3) to mean that all required data elements are reported in a form and manner that adheres to specifications prescribed by CMS.

In § 435.562(c), we establish that States must provide timely and complete data that is of sufficient quality to monitor enrollment, retention and eligibility processes for community engagement activities that begin January 1, 2027, (or earlier date specified by the State). In § 435.562(d), we require that States submit data elements for applicants and beneficiaries applying for and receiving medical assistance, including individuals subject to the requirements of section 1902(xx) of the Act through five specified categories. These five specified categories are: (1) enrollment totals of individuals applying for and receiving medical assistance; (2) application and renewal processing, timeliness, and backlogs; (3) outcomes of determinations and redeterminations eligibility; (4) populations subject to and their compliance with the requirements of section 1902(xx) of the Act; and (5) other such data specified by CMS in regulation, guidance, or technical specifications to monitor implementation and the impact of community engagement.

We also notify States in § 435.562(e) that failure to submit data or submission of data that indicate compliance issues may result in corrective action under

section 1904 of the Act, additional data collection, or additional outreach noticing as described at § 435.561(b). In § 435.562(e)(1) and (2), States may be subject to such actions if reported data are not timely, complete, or of sufficient quality (as defined in this section), if reported monitoring data indicate a failure to comply substantially with section 1902(xx) of the Act, or determination and redetermination outcomes indicate a need for increased outreach. This includes when data indicate program integrity issues, such as determination outcomes in a State that would make them an outlier, like large percentages of individuals who are excluded or meet a particular exclusion or exception. When reviewing data for evidence of compliance issues, we will review data trends within a State month-over-month as well as how a State’s data compare to analogous data from other States to determine whether additional information from the State is needed to understand and interpret the data. We will assess whether further outreach or compliance action may be necessary based on findings identified through this data-driven, interactive process with the State and will provide reasonable notice and opportunity for hearing before any financial withholding is taken under section 1904 of the Act. We will also assess the monitoring data and determine if additional beneficiary outreach is necessary in a State that reports outcome data, such as higher numbers of procedural terminations at renewal compared to other States, that suggest such action may be needed to ensure beneficiaries understand how to demonstrate community engagement.

III. Good Cause for Proceeding With an Interim Final Rule With Comment Period

For the reasons described in this section, we have determined that an IFC is the appropriate mechanism to implement section 1902(xx) of the Act. Although this IFC is effective in 60 days, comments are solicited from interested members of the public on all aspects of the IFC. We will consider these comments in deciding the next steps following this IFC.

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)), CMS may forgo notice-and-comment rulemaking when it finds, for good cause, that such procedures are impracticable, unnecessary, or contrary to the public interest.

Section 71119(d) of the WFTC legislation directs that not later than June 1, 2026, the Secretary of HHS shall issue an interim final rule for purposes

of implementing section 71119 of the WFTC legislation, related to community engagement for certain adults. It also explicitly notes that any action taken to implement section 71119 of the WFTC legislation is not subject to the provisions of 5 U.S.C. 533, which generally requires Federal agencies to follow notice and comment of proposed rulemaking procedures. We also recognize that States must implement the community engagement requirement no later than January 1, 2027, and therefore need time to understand the requirements and expectations and build systems and operations to ensure timely compliance. We find that there is good cause based on the totality of these circumstances to forgo notice-and-comment rulemaking. The express exemption from the provisions of 5 U.S.C. 553 and the need to provide States with time to implement the community engagement requirement by January 1, 2027, demonstrate that undergoing notice-and-comment rulemaking is impracticable, unnecessary, and would be contrary to the public interest. Restoring the regulations affected by the section 71102 moratorium until October 1, 2034, also aligns with the directive in section 71119(d) of the WFTC legislation, which explicitly notes that any action taken to implement section 71119 of the WFTC legislation is not subject to the provisions of 5 U.S.C. 533. As noted in section II.A. of this IFC, the restoration of the regulations in this IFC while the moratorium is in effect is necessary to establish an enforceable community engagement requirement. As such, notice-and-comment rulemaking is impracticable and unnecessary simply to restore eligibility and enrollment policies relied on by the regulations implementing section 71119 for the duration of the moratorium.

While under these specific circumstances we find good cause for issuing this IFC prior to a public comment period, we are committed to considering public input. We invite comments on this IFC and future rulemaking. Comments received by the date specified in the **DATES** section of this IFC will be considered.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, we are required to provide notice in the **Federal Register** and solicit public comment before a “collection of information” requirement is submitted to the Office of Management and Budget (OMB) for review and approval. The term, collection of information, is

defined under 5 CFR 1320.3(c) of the PRA’s implementing regulations. To fairly evaluate whether an information collection should be approved by OMB, 44 U.S.C. 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.

- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.
- We are soliciting public comment on each of these issues for the following sections of this rule that contain confirmed or potential information collection requirements.

A. Wage Estimates

1. States and the Private Sector

To derive average costs, we used data from BLS’ May 2024 National Occupational Employment and Wage Estimates for all salary estimates (<https://www.bls.gov/oes/tables.htm>). In this regard, Table 3 presents BLS’ mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 3: National Occupational Employment and Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Other Indirect Costs (\$/hr)	Adjusted Hourly Wage (\$/hr)
Business and Financial Operations Occupations	13-0000	45.04	45.04	90.08
Business Operations Specialists	13-1000	43.76	43.76	87.52
Computer and Information Analyst	15-1210	55.83	55.83	111.66
Computer Programmers	15-1251	49.83	49.83	99.66
General and Operations Managers	11-1021	64.00	64.00	128.00
Mail Clerks and Mail Machine Operators, Except Postal Service	43-9051	19.33	19.33	38.66
Medical and Health Services Manager	11-9111	66.22	66.22	132.44
Operations Research Analysts	15-2031	47.66	47.66	95.32

For States and the private sector, the employee hourly wage estimates have been adjusted by a factor of 100 percent. This is a rough adjustment, because both fringe benefits and other indirect costs vary significantly across all employers, and because methods of estimating these costs vary widely across studies. Nonetheless, we believe that doubling the hourly wage to estimate the total cost is a reasonably accurate method.

2. Beneficiaries

To calculate the costs for beneficiaries undertaking administrative and other tasks on their own time we use the opportunity cost of time. Following the White House Council of Economic Advisers (2019) ¹²⁰, we estimate the gap between the marginal product of labor

(MPL) and the opportunity cost of time as 48 percent of the MPL. That is, we use an opportunity cost of time of \$12.92 per hour (= \$24.84 * (1 – 0.48)). We adopt this as our estimate of the hourly value of time for changes in time use for unpaid activities. Unlike our State and private sector wage adjustments, we are not adjusting beneficiary costs for fringe benefits and other indirect costs since the individuals’ activities, if any, would occur outside the scope of their employment.

B. Adjustment to State Cost Estimates

To estimate the financial burden on States, it was important to consider the Federal government’s contribution to the cost of administering the Medicaid program. For Medicaid, all States receive a 50 percent Federal matching rate for most administration expenditures. States also receive higher Federal Financial Participation (FFP) rates of 90 percent for the design, development, and implementation and

75 percent for the operations and maintenance of Medicaid IT systems. After taking into account the Federal contribution to the costs of administering the Medicaid programs for purposes of estimating State burden for the collection of information, we are estimating that States will contribute 25 percent of the costs for Medicaid Information Technology (IT) system updates and 50 percent of all other costs, even though the burden will likely be smaller.

C. Information Collection Requirements (ICRs)

The implementation of section 1902(xx) of the Act through this IFC will require States (and, where applicable, their contractors, in compliance with statutory single State agency requirements and conflict-of-interest limitations) to collect, verify, maintain, and report information to administer the community engagement requirement for “applicable individuals,” including the operation of exceptions and exclusions,

¹²⁰ White House Council of Economic Advisers. (March 2019) *Economic Report of the President*, 2019, p. 423. <https://www.govinfo.gov/content/pkg/ERP-2019/pdf/ERP-2019.pdf>. See also <https://www.nber.org/papers/w18088>, as discussed in more detail near Table 46 in this regulatory preamble.

ex parte verification processes, notices, and noncompliance procedures.

CMS and States will use the collected information to:

- Determine whether an individual is a specified excluded individual as defined in 1902(xx)(9)(A)(ii) of the Act, has demonstrated compliance with the community engagement requirement in the month as required by section 1902(xx)(1) and (2) of the Act, or is deemed to have demonstrated compliance in the month under a mandatory or optional exception in section 1902(xx)(3) of the Act.

- Conduct required verifications at application and redetermination and, at State option, more frequently, as permitted by section 1902(xx)(4) of the Act.

- Support required *ex parte* verification processes using reliable information available to the State (for example, payroll or other administrative data) and minimize requests to individuals, consistent with section 1902(xx)(5) of the Act.

- Implement procedural protections when compliance cannot be verified, including issuance of notices, the 30-day response period, continued coverage during the response period for enrolled individuals, and fair hearing rights, consistent with section 1902(xx)(6) of the Act.

- Conduct required outreach and periodic notifications to inform enrolled individuals about requirements, exceptions, exclusions, consequences of noncompliance, and how to report changes, consistent with section 1902(xx)(8) of the Act.

- Oversee State implementation and, where applicable, monitor progress under any statutory implementation exemption through quarterly progress reports and risk/mitigation updates, consistent with section 1902(xx)(11)(D) of the Act.

1. ICRs Regarding State Requirements To Submit Data for Monitoring Community Engagement (§ 435.562)

The following changes will be submitted to OMB for approval under control numbers 0938–1148 (CMS–10398 #35), 0938–1188 (CMS–10434 #66), and 0938–0345 (CMS–R–284).

Sections 1902(a)(6) and (a)(75) of the Act provide CMS with the authority to require States to submit data that allows CMS to monitor State eligibility and enrollment processes. Under these existing statutory authorities, States submit monthly Medicaid and CHIP eligibility and enrollment information to CMS through the Medicaid and CHIP Performance Indicator data via CMS–10398 #35, the Medicaid and CHIP

Eligibility Processing data via CMS–10434 #66, and T–MSIS data submissions via CMS–R–284. These established data collections support program transparency and oversight by enabling CMS, States, and the public to monitor eligibility and enrollment operations and by allowing CMS to identify potential compliance and program integrity concerns and to initiate timely engagement with State agencies.

As discussed in section II.O. of this IFC preamble and codified at § 435.562, CMS will require State submissions of monitoring and program operations data related to community engagement implementation and outcomes according to the cadence and not later than the deadline specified by us, including (as applicable) reporting through existing Medicaid data systems identified above and below in Table 5. Under CMS–10398 #35, CMS–10434 #66, and CMS–R–284, States must submit data for the following data elements for applicants and beneficiaries applying for and receiving medical assistance, including individuals subject to the requirements of section 1902(xx) of the Act or § 435.562, or must make system and reporting changes to enable the collection of these data elements:

- Enrollment totals of individuals applying for and receiving medical assistance.
- Application and renewal processing timeliness, and backlogs.
- Outcomes determinations and redeterminations of eligibility.
- Population counts of individuals subject to and their compliance with the requirements of section 1902(xx) of the Act (or §§ 435.550 through 435.563).
- Any other data specified by CMS to monitor State implementation of §§ 435.550 through 435.563.

For reporting community engagement monitoring data, a State is defined as any of the 50 States and the District of Columbia that provides medical assistance that is subject to the requirements at section 1902(xx) of the Act. We estimate that 44 jurisdictions meet this definition (43 States and the District of Columbia) and that they will need to assess their inputs and develop the necessary data outputs for submission to CMS to support compliance with the community engagement reporting requirements. For the purpose of estimating burden, we assume these jurisdictions will need to submit the community engagement data to CMS monthly. However, CMS may specify a different, less frequent cadence, at a later date.

a. Performance Indicator Data (Annual Reporting for Monitoring Community Engagement)

The burden associated with the performance indicator (PI) data report consists of the initial, one-time system and process changes by jurisdictions to the PI data reporting to be able to pull the new data collection and report to CMS. The burden also consists of the time and effort for the State to pull and analyze data for accuracy and completeness and to submit data through the designated reporting mechanism. CMS estimates that 44 jurisdictions will need to report six new data metrics and update the data of a previously submitted PI data report on an ongoing monthly basis.

For the one-time system and process updates, CMS estimates 44 jurisdictions will spend 162 hours to make changes for a total of 7,128 hours (44 jurisdictions × 162 hr = 7,128 hr). CMS estimates it will take a Computer and Information Analyst 160 hours at \$111.66/hr to review existing eligibility and enrollment data and organize these data appropriately to submit to CMS to meet the PI reporting requirements of § 435.562. In addition, we estimate it will take a General and Operations Manager 2 hours at \$128.00/hr to review the data and approve the submission of the data to CMS. In total, we estimate a total one-time cost of \$797,350 [44 × (160 hr × \$111.66/hr) + (2 hr × \$128.00/hr)]. Assuming a Federal administrative match of 75 percent, the estimated State share is \$199,338 (\$797,350 × 0.25).

For the ongoing monthly reporting and updates of PI data, CMS estimates 44 jurisdictions will submit 2 reports each with existing metrics and new community engagement metrics on up to a monthly basis or, 1056 responses on an annual basis (44 jurisdictions × 2 reports × 12 months = 1056 responses/year). CMS estimates it will take a Computer and Information Analyst 3 hours (0.50 hours each for 6 metrics) at \$111.66/hr to conduct the ongoing monthly reporting and updates for new community engagement measures. In addition, we estimate it will take a General and Operations Manager 1 hour (10 minutes each for six metrics) at \$128.00/hr to review the data and approve the submission of the community engagement data to CMS. The corresponding total annual cost is \$488,907 [1,056 × (3 hr × \$111.66/hr) + (1 hr × \$128.00/hr)]. Assuming a Federal administrative match of 75 percent, the estimated State share is \$122,227 (\$488,907 × 0.25).

b. Eligibility Processing Data (Annual Reporting for Monitoring Community Engagement)

For the one-time system and process updates, CMS estimates 44 jurisdictions will spend 162 hours to make changes for a total of 7,128 hours (44 jurisdictions × 162 hr = 7,128 hours). CMS estimates it will take a Computer and Information Analyst 160 hr at \$111.66/hr to review existing eligibility and enrollment data and organize these data appropriately to submit to CMS to meet the Eligibility Processing (EP) reporting requirements of § 435.562. In addition, we estimate it will take a General and Operations Manager 2 hours at \$128.00/hr to review the data and approve the submission of the data to CMS. In total, we estimate a total one-time cost of \$797,350 [44 × (160 hr × \$111.66/hr) + (2 hr × \$128.00/hr)]. Assuming a Federal administrative match of 75 percent, the estimated State share is \$199,338 (\$797,350 × 0.25).

For the ongoing monthly reporting and updates of EP data, CMS estimates 44 jurisdictions will submit 2 reports each with existing metrics and new

community engagement metrics on up to a monthly basis or, 1056 responses on an annual basis (44 jurisdictions × 2 reports × 12 months = 1056 responses/year). CMS estimates it will take a Computer and Information Analyst 3 hours (0.60 hours each for 5 metrics) at \$111.66/hr to conduct the ongoing monthly reporting and updates for new community engagement measures. In addition, we estimate it will take a General and Operations Manager 1 hour (0.20 hours each for five metrics) at \$128.00/hr to review the data and approve the submission of the community engagement data to CMS. The corresponding total annual cost is \$488,907 [1,056 × (3 hr × \$111.66/hr) + (1 hr × \$128.00/hr)]. Assuming a Federal administrative match of 75 percent, the estimated State share is \$122,227 (\$488,907 × 0.25).

c. T-MSIS Data

For one-time system and process changes, CMS estimates 44 jurisdictions will spend 250 to 500 hours to implement the T-MSIS reporting changes for a total of 11,000 and 22,000

hours (250–500 hr × 44 respondents). CMS estimates it will take a Medical and Health Services Manager 250 to 500 hours at \$132.44/hr. to implement the changes. The corresponding total annual cost is between \$1,456,840 and \$2,913,680 (11,000 – 22,000 hr × \$132.44/hr). Assuming a Federal administrative match of 75 percent, the State share is between \$364,210 and \$728,420. To avoid underestimating our burden analysis, we use the high end of our burden estimate to score the PRA-related impact related to the one-time system and process changes required to implement these T-MSIS reporting changes.

Annual operational costs are not expected to increase above current T-MSIS reporting burden once the one-time T-MSIS file changes are implemented due to the automated nature of T-MSIS file submissions. The one-time implementation costs will allow the States to automate and integrate community engagement data collection into their ongoing T-MSIS file submissions.

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Table 4: One-Time Burden for Monitoring Community Engagement

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Medicaid and CHIP Performance Indicator (PI) data (CMS-10398 # 35; OMB 0938-1148)								
44 Jurisdictions	44	One-Time	162	7,128	Varies	797,350	598,012	199,338
Medicaid and CHIP Eligibility Processing (EP) data (CMS-10434 # 66; OMB 0938-1188)								
44 Jurisdictions	44	One-Time	162	7,128	Varies	797,350	598,012	199,338
T-MSIS data submissions (CMS-R-284; OMB 0938-0345)								
44 Jurisdictions	44	One-Time	500	22,000	132.44	2,913,680	2,185,260	728,420
TOTAL	132	One-Time	824	36,256	Varies	4,508,380	3,381,284	1,127,096

TABLE 5: Annual Reporting for Monitoring Community Engagement

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Medicaid and CHIP Performance Indicator (PI) data (CMS-10398 # 35; OMB 0938-1148)								
44 Jurisdictions	1,056 (44 x 2 x 12 responses/year)	Monthly	4	4,224	Varies	488,907	366,680	122,227
Medicaid and CHIP Eligibility Processing (EP) data (CMS-10434 # 66; OMB 0938-1188)								
44 Jurisdictions	1,056 (44 x 2 x 12 responses/year)	Monthly	4	4,224	Varies	488,907	366,680	122,227
TOTAL	2,112	Monthly	8	8,448	Varies	977,814	733,360	244,454

BILLING CODE 4120-01-C**2. ICRs Regarding Good Faith Effort Exemptions and Quarterly Reporting (§ 435.560)**

The following changes will be submitted to OMB for approval under control number 0938-1148 (CMS-10398 #100).

As stated in section II.K. of this IFC, States must implement the community engagement requirement (such as the demonstration or deemed demonstration of community engagement by certain individuals) beginning January 1, 2027, although States may elect an earlier implementation date.

Section 1902(xx)(11) of the Act provides the Secretary of HHS with the authority to provide States with a temporary good faith effort exemption from timely implementation of the community engagement requirement and outlines the criteria that must be considered when evaluating whether a State has demonstrated a good faith effort towards implementation.

Section 1902(xx)(11)(B) of the Act, codified at § 435.560, outlines the criteria CMS must consider when determining whether a State has demonstrated a good faith effort towards implementing the community engagement requirement. Section

1902(xx)(11)(A)(i) of the Act provides CMS with the ability to specify the form and timing of States' requests for a good faith effort exemption. Good faith effort exemptions will be considered on a case-by-case basis and will be approved only for States that demonstrate they have a work plan, have been diligently making progress on the work plan every month in 2026, and were only limited by circumstances beyond the control of the State.

States that cannot meet the statutory effective date and seek additional time will be required to submit a good faith effort exemption request, and, if granted an exemption, submit quarterly progress reports. Collections include:

- Exemption request submission, including milestones and plan to implement the requirement.
- Quarterly reports on progress toward milestones.
- Quarterly (or as-needed) reporting on newly identified risks/barriers and mitigation plans.

As of May 2026, 43 States and the District of Columbia (44 jurisdictions) cover populations subject to the community engagement requirement at section 1902(xx) of the Act. To date, several of the 44 jurisdictions have been preparing for, or have previously implemented, a similar community engagement requirement, thus reducing

the need for a potential good faith exemption request. CMS will work with each State to support compliance by the January 1, 2027, statutory effective date to reduce the need for a good faith exemption and to assist States in addressing any unforeseen challenges. Ultimately, we estimate that approximately 10 States will need to prepare and submit a good faith exemption request.

For the development and submission of the good faith effort exemptions, we estimate that it will take approximately 24 hours at \$87.52/hr for a Business Operations Specialist to develop the exemption request, which includes documenting the State's efforts to date, challenges and barriers the State faces, and a work plan to document progress toward fully implementing the community engagement requirement. We also estimate that it will take 4 hours at \$128.00/hr for General and Operations Managers to review and provide oversight prior to submission to CMS. In aggregate, we estimate a one-time burden of 280 hours (28 hr × 10 States) at a cost of \$26,125 [(240 hr × \$87.52/hr) + (40 hr × \$128.00/hr)]. Accounting for the Federal administrative match of 50 percent, the requirement will cost States \$13,063 (\$26,125 × 0.50).

TABLE 6: Burden for Preparing/Submitting the Good Faith Effort Exemption Request

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share	State Share (\$)
Good Faith Effort Exemption Request and Workplan	10 Jurisdictions	10	One-Time	28	280	Varies	26,125	13,063	13,063

Each good faith effort exemption request will be reviewed and adjudicated on its own merits. For the purposes of this burden estimate we estimate that of the approximately 10 States that we expect to apply, we will approve approximately 2 States for a good faith effort exemption. These estimated two States will need to develop and submit quarterly reports to document their implementation progress. States will be eligible to submit quarterly reports for a maximum of 2 years; for burden purposes, we assume both States will submit quarterly reports in the first year, but that only 1 State will require an

ongoing exemption and will continue to submit quarterly reports in the second year. In total we estimate that 12 quarterly reports will be submitted [(2 States × 4 reports in year 1) + (1 State × 4 reports in year 2)]. We estimate that each quarterly report will take approximately 12 hours at \$87.52/hr for a Business Operations Specialist to prepare. The burden relates to the quarterly reports on: (1) the status of the milestones the State provided on the detailed plan and timeline for achieving full compliance, per § 435.560(b)(3); and (2) information on specific risks or newly identified barriers or challenges

to full compliance, including the State’s plan to mitigate such risks, barriers, and challenges. We also estimate that it would take General and Operations Managers 0.5 hours at \$128.00/hr to review and provide oversight prior to submission to CMS. In aggregate, we estimate a total burden of 150 hours (12.5 hr/report × 12 quarterly reports) at a cost of \$13,371 [(144 hr × \$87.52/hr) + (6 hr × \$128.00/hr)]. Accounting for the Federal administrative match of 50 percent, the requirement will cost States \$6,686 (\$13,371 × 0.50).

TABLE 7: Quarterly Reporting Burden for States with Good Faith Effort Exemptions

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Quarterly Reporting	2 Jurisdictions	12 [(2 States x 4 reports in year 1) + (1 State x 4 reports in year 2)]	Quarterly	12.5	150	Varies	13,371	6,686	6,686

We have summarized the total burden associated with good faith effort exemptions under § 435.560 in Table 8.

TABLE 8: Good Faith Effort Exemption Submission and Quarterly Reporting

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Good Faith Effort Exemption Request and Workplan	10 Jurisdictions	10	One-Time	28	280	Varies	26,125	13,063	13,063
Quarterly Reporting	2 Jurisdictions (of the 10 GFE requests)	12	Quarterly for 2 years	12.5	150	Varies	13,371	6,686	6,686
TOTAL	10 Jurisdictions	22	Varies	40.5	430	Varies	39,496	19,748	19,748

3. ICRs Regarding State Plan Amendment (SPA) Submissions To Implement and Confirm Compliance (§ 430.10)

The following changes will be submitted to OMB for approval under control number 0938–1188 (CMS–10434 #15).

Section 1902(a) of the Act requires that States have a State plan for medical assistance that meets certain Federal requirements that set forth a framework for the State program. States will be required to submit a SPA (and any associated attachments) using a new, CMS-provided template to implement the community engagement requirement consistent with section 1902(xx) and CMS implementing regulations at § 430.10.

SPA submissions will describe State policies and operational approaches, including notices, exceptions, exclusions, and compliance procedures, and will be updated as needed when State approaches change. As noted in section H.2. of this IFC, States must specify the number of consecutive months an applicable individual must demonstrate community engagement prior to the month of application in the State plan.

To develop the SPA, States will need to describe the process they are using to implement community engagement standards, including the processes to confirm and document an applicant's or beneficiary's compliance with the community engagement requirement.

We estimate that it will take approximately 44 hours per jurisdiction

for this one-time activity. States will have to document their processes, identify and compile all necessary information, and amend their State Plans. Of the 44 hours, we estimate that it will take 40 hours at \$87.52/hr for a Business Operations Specialist to prepare and submit the SPA and 4 hours at \$128.00/hr for a General and Operations Manager to review the data and submit the SPA. In aggregate, we estimate a one-time burden of 1,936 hours (44 hr × 44 jurisdictions) at a cost of \$176,563 ((44 jurisdictions × (40 hr × \$87.52/hr) + (4 hr × \$128.00/hr)). Accounting for the Federal administrative match of 50 percent, we estimate a State cost of \$88,282 (\$176,563 × 0.50). We have summarized the total burden in Table 9.

TABLE 9: State Plan Amendment Compliance Submissions

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	One-Time	44	1,936	Varies	176,563	88,282	88,282

4. ICRs Regarding Verification Plan Submission and Updates (§ 435.557)

The following changes will be submitted to OMB for approval under control number 0938–1148 (CMS–10398 #11).

In section II.I. of this IFC, States are required to verify compliance, deemed compliance or status as a specified excluded individual for certain adults

who are eligible for, or are enrolled in, Medicaid. Specifically, States must verify whether an applicant or beneficiary demonstrated community engagement, is deemed to have demonstrated community engagement for all or part of a month that the individual was in a mandatory or optional excepted status, or is a “specified excluded individual” to

whom the community engagement requirement does not apply. Additionally, States are required to conduct *ex parte* verifications by maximizing reliance on electronic data sources in verifying compliance with the community engagement requirement, including deemed compliance, or that an individual is a “specified excluded individual” and in

what circumstances States may require individuals to provide additional information.

The regulation in § 435.945(j) requires States to “develop, and update as modified, and submit to the Secretary, upon request, a verification plan describing the verification policies and procedures adopted by the State agency to implement the provisions set forth in §§ 435.940 through 435.956,” which relate to the verification of income, assets and citizenship status, amongst other eligibility criteria. In this IFC, we incorporate this requirement for the purpose of verifying that an individual has met or is excluded from the community engagement requirement. As such, CMS has updated the MAGI verification plan to include a supplement specific to community engagement. States will be required to document and submit to CMS their verification plans describing how, consistent with Federal standards, the State will determine and verify:

- Demonstration of compliance with the community engagement requirement.
- Mandatory exceptions for deemed compliance.
- Status as a specified excluded individual.

- Optional exceptions for short-term hardship events for deemed compliance.
 - Use of *ex parte* processes and use of reliable data sources at both application and renewal, and more frequently at State option, including when the State will request information from individuals.
 - Controls to ensure consistency, timeliness, and proper documentation of determinations.
- Section 1902(xx)(5) of the Act requires States to conduct *ex parte* verification of the community engagement requirement, directing States to verify compliance with, or exception (for deemed compliance) or exclusion from, the community engagement requirement using reliable information available to the State, including information in the individual’s record and more recent information obtained from electronic data sources without requiring additional information from an applicant or a beneficiary. States must use reliable information available to the State to verify compliance with the community engagement requirement, which includes, but is not limited to, their existing data sources, the Federal Data Services Hub, or other data sources

to determine income and other eligibility criteria. A State’s own case records, claims systems or payments, or encounter data are also reliable information available to the State for purposes of verification requirements under Section 1902(xx)(5) of the Act.

To comply with the requirements for the verification plan, we estimate that each of the 43 States and the District of Columbia have a one-time burden of 124 hours to develop the verification plan. Of the 124 hours, we estimate that it will take 60 hours at \$87.52/hr for a Business Operations Specialists to prepare the verification plan, 60 hours at \$95.32/hr for an Operations Research Analyst to prepare and review the data, and 4 hours at \$128.00/hr for a General and Operations Manager to review the data and submit the verification plan. In aggregate, we estimate a one-time burden of 5,456 hours (124 hr × 44 jurisdictions) at a cost of \$505,226 (44 × [(60 hr × \$87.52/hr) + (60 hr × \$95.32/hr) + (4 hr × \$128.00/hr)]). Accounting for the Federal administrative match of 50 percent, the requirement will cost States \$252,613 (\$505,226 × 0.50). We have summarized the total burden in Table 10.

TABLE 10: Verification Plan Submission

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Verification Plan	44 Jurisdictions	44	One-Time	124	5,456	Varies	505,226	252,613	252,613

Additionally, we assume recurring burden associated with updating and maintaining the initial verification plan supplement submission. We estimate 5 States per year will make verification plan updates. For each of these States, we estimate it will take 5 hours at \$87.52/hr for a Business Operations

Specialist and 5 hours at \$95.32/hr for an Operations Research Analyst to update their verification plan. We also estimate that it will take 1 hour at \$128.00/hr for General and Operations Managers to review the data and submit the verification plan. In aggregate, we estimate an annual burden of 55 hours

(11 hr/response × 5 jurisdictions) at a cost of \$5,211 (5 × [(5 hr × \$87.52/hr) + (5 hr × \$95.32/hr) + (1 hr × \$128.00/hr)]). Accounting for the Federal administrative match of 50 percent, the requirement will cost States \$2,606 (\$5,211 × 0.50). We have summarized the total burden in Table 11.

TABLE 11: Verification Plan Updates

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Plan Updates	5 Jurisdictions	5	Annual	11	55	Varies	5,211	2,606	2,606

We have summarized the total burden for the verification plan submission and annual updates in Table 12.

TABLE 12: Total Burden: Verification Plan Submission and Updates

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Verification Plan	44 Jurisdictions	44	One-Time	124	5,456	Varies	505,226	252,613	252,613
Plan Updates	5 Jurisdictions	5	Annual	11	55	Varies	5,211	2,606	2,606
TOTAL	44 Jurisdictions	49	Varies	135	5, 511	Varies	510,437	255,219	255,219

5. ICRs Regarding Beneficiary Application Updates (Single Streamlined and Presumptive Eligibility Applications) (§§ 435.912, 435.556, and 435.557)

The following changes will be submitted to OMB for approval under control number 0938–1147 (CMS–10410).

Section 1902(xx) of the Act requires that “applicable individuals” demonstrate as a condition of their Medicaid eligibility, “community engagement” for a minimum period of time preceding their application month and during their enrollment. Section 1902(xx)(9)(A)(i) of the Act defines the term “applicable individual” to mean “an individual . . . who is eligible to enroll (or is enrolled) under the State plan under subsection (a)(10)(A)(i)(VIII), or who is otherwise eligible to enroll (or is enrolled) under a waiver of such plan . . .” and is not a “specified excluded

individual.” These requirements will necessitate updates by States to their single, streamlined application; alternative single, streamlined application; associated instructions; and/or renewal-related materials, as applicable, to reflect community engagement-related information that must be communicated and collected consistent with section 1902(xx) of the Act and implementing regulations.

For these updates, we estimate that each of the 43 States and the District of Columbia will need to implement changes to their websites, required at § 435.1200(f), including updates to the online and electronic versions of their applications, instructions, forms, notices, templates, and postings. We estimate a one-time burden of 116 hours per State to accomplish these tasks. States will need to incorporate the requirements of the terms “applicable individuals” and “specified excluded

individuals” into their eligibility processes and documents. Of the 116 hours, we estimate it will take 80 hours at \$90.08/hr for a Business and Financial Operations Occupation to perform this task, 32 hours at \$99.66/hr for a Computer Programmer to implement the technical changes to the associated website, and 4 hours at \$128.00/hr for a General and Operations Manager to review and provide oversight prior to submission and implementation. In aggregate, we estimate a one-time burden of 5,104 hours ($116 \text{ hr} \times 44 \text{ jurisdictions}$) at a cost of \$479,931 ($44 \times [(80 \text{ hr} \times \$90.08/\text{hr}) + (32 \text{ hr} \times \$99.66/\text{hr}) + (4 \text{ hr} \times \$128.00/\text{hr})]$). Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$119,983 ($\$479,931 \times 0.25$). We have summarized the total burden in Table 13.

TABLE 13: Beneficiary Application Updates (Single, Streamlined Application)

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	One-Time	116	5,104	Varies	479,931	359,948	119,983

In addition to the single, streamlined applications and associated instructions and renewal-related material updates, States will need to make updates to their hospital presumptive eligibility and/or presumptive eligibility applications and provider training materials, including eligibility determination notices. The updates to hospital presumptive eligibility

materials are applicable to those States that cover the adult group in their State plan, and for optional presumptive eligibility, to those States that have elected to provide presumptive eligibility to the adult group. For the updates to presumptive eligibility and hospital presumptive eligibility, we estimate that 38 States and the District of Columbia (39 jurisdictions) will need

to incorporate the regulatory requirements into their provider training materials, eligibility notices, and application materials.

For these updates, we estimate that each of the 39 jurisdictions will need to incorporate the regulatory requirements into their application process and make updates to their hospital presumptive eligibility and/or presumptive eligibility

applications and provider training materials. States will also need to update any electronic hospital presumptive eligibility and/or presumptive eligibility forms, templates, and notice-generation artifacts, as applicable. We estimate a one-time burden of 64 hours per State consisting of 36 hours at \$90.08/hr for a Business

and Financial Operations Occupation to perform this task, 24 hours at \$99.66/hr for a Computer Programmer to conduct the technical tasks, and 4 hours at \$128.00/hr for a General and Operations Manager to review and provide oversight prior to submission. In aggregate, we estimate a one-time burden of 2,496 hours (64 hr × 39

jurisdictions) at a cost of \$239,722 (39 × [(36 hr × \$90.08/hr) + (24 hr × \$99.66/hr) + (4 hr × \$128.00/hr)]. Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$59,931 (\$239,722 × 0.25). We have summarized the total burden in Table 14.

TABLE 14: Beneficiary Application Updates (Presumptive Eligibility Application)

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
39 Jurisdictions	39	One-Time	64	2,496	Varies	239,722	179,791	59,931

In addition, Medicaid applicants and beneficiaries may be required to provide additional information or documentation to verify their status as excepted or excluded from the community engagement requirement, including their status as an individual that is medically frail or has other special medical needs as defined at § 435.554(c)(5), or to provide information to the State to demonstrate how they satisfied the community engagement requirement. Beneficiaries will have to submit documentation or other information if the State cannot verify compliance based on available information, including data sources.

Based on State-reported renewal data from calendar year 2025, we estimate that approximately 56 percent of the approximately 20 million total applicable individuals that will be due for renewal will have their compliance

with, or exception or exclusion from, the community engagement requirement verified *ex parte*, and that the remaining 44 percent, or 8.8 million beneficiaries, will need to provide information to the State.¹²¹ We also estimate, on average, it will take 2 hours at \$12.92/hr for a beneficiary to document and submit their information or documentation regarding community engagement to the State every 6 months. We acknowledge the options at § 435.557(d) for States to conduct more frequent verifications for applicable individuals. We also note that some applicable individuals enrolled in Medicaid under an 1115 demonstration will continue to have their eligibility renewed once every 12 months instead of every 6 months. Further, as described at § 435.557(f)(1)(iii), States may elect to reverify continued medical frailty status once every 12 months for individuals

whose specified excluded status on the basis of being medically frail or otherwise have special medical needs was initially verified based on available information or documentation. However, on balance, we believe that for the purpose of estimating burden, the vast majority of States will verify compliance with, or exception or exclusion from, the community engagement requirement, and that certain adults may be required to submit information to verify their compliance, every 6 months.

In aggregate, we estimate an annual burden of 35.2 million hours (8.8 million beneficiaries providing information to the State × 2 hr/response × 2 responses/year) at a cost of \$454,784,000 (35.2 million hr × \$12.92/hr). We have summarized the total burden in Table 15.

TABLE 15: Beneficiary Burden for Community Engagement Information Submission

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)
8,800,000 Beneficiaries	17,600,000	Semiannual	2	35,200,000	12.92	454,784,000

Additionally, we estimate that 3.75 million new applicants will have to submit their information to the State to demonstrate compliance with the requirements. This estimate of new applicants is an approximation. State-reported data published by CMS shows that 30.6 million applications for

Medicaid and CHIP were received in 2025.¹²² If we assume 10 percent are CHIP applications, that would leave approximately 27.5 million Medicaid applications. However, this same dataset notes that many of the data reported by States include renewals and/or redeterminations, the burden for

which is captured in Table 15. Therefore, we assume that only 15 million of these will be new Medicaid applications, of which 25 percent, or 3.75 million, will be subject to the community engagement requirement and required to submit information to demonstrate their compliance. We

¹²¹ State Medicaid and CHIP Eligibility Processing Data, updated April 24, 2026. State Medicaid and CHIP Eligibility Processing Data.

¹²² January 2026: Medicaid and CHIP Eligibility Operations and Enrollment Snapshot, slide 13.

<https://www.medicaid.gov/resources-for-states/downloads/eligib-oper-and-enrol-snap-jan2026.pdf>.

estimate, on average, it will take 2 hours at \$12.92/hr for a new applicant to document and submit their information or documentation regarding community engagement to the State at the time of application. In aggregate, we estimate an

annual burden of 7,500,000 hours (3,750,000 beneficiaries providing information to the State $\times$ 2 hr/response) at a cost of \$96,900,000 (7,500,000 hr $\times$ \$12.92/hr).

We have summarized the annual burden for applicants in Table 16, and

the total burden associated with beneficiary applications (single streamlined applications, presumptive eligibility applications, and hospital presumptive eligibility applications) in Table 17.

TABLE 16: Summary of Annual New Applicant Burden for Community Engagement Information Submission

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)
3,750,000 Applicants	3,750,000	Annual	2	7,500,000	12.92	96,900,000

TABLE 17: Total Beneficiary Application Burden (States, Beneficiaries, and Applicants)

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Beneficiary Application Updates (Single, Streamlined Application)								
44 Jurisdictions	44	One-Time	116	5,104	Varies	479,931	359,948	119,983
Beneficiary Application Updates (Presumptive Eligibility Application)								
39 Jurisdictions	39	One-Time	64	2,496	Varies	239,722	179,791	59,931
Beneficiary Burden for Community Engagement Information Submission								
8,800,000 Beneficiaries	17,600,000	Semiannual	2	35,200,000	12.92	454,784,000	n/a	n/a
New Applicant Burden for Community Engagement Information Submission								
3,750,000 Applicants	3,750,000	Annual	2	7,500,000	12.92	96,900,000	n/a	n/a
TOTAL	2121,350,083	Varies	Varies	34,007,600	Varies	552,403,653	539,739	179,914

6. ICRs Regarding Short-Term Hardship Exception Requests (§ 435.555)

The following changes will be submitted to OMB for approval under control number 0938–1148 (CMS–10398 #101).

Section II.G. of this IFC discusses the State option to deem an individual to have demonstrated community engagement for a month when the individual experiences one of the short-term hardship circumstances described in section 1902(xx)(3)(B)(ii) of the Act and codified at § 435.555(d) during such month. As exceptions at § 435.555 are optional, we acknowledge that not all States may elect to grant them. However, given uncertainty at this time and so as not to underestimate, our burden estimations described below

assume that all 44 jurisdictions subject to the community engagement requirement will elect to make short-term hardship exceptions available under circumstances described at section 1902(xx)(3)(B)(ii) of the Act and § 435.555(d). Generally, these circumstances are as follows: an individual receives for all or part of a month certain hospital or institutional services (or other services of “similar acuity” as the Secretary determines appropriate); subject to a request by the State, an individual resides in a county or equivalent unit of local government in which there has been declared by the President a Federal emergency or disaster, or, in which the unemployment rate is equal or greater than a particular threshold; or the individual or the individual’s

dependent must travel outside of their community for an extended period of time for treatment of a serious or complex medical condition.

Section 1902(xx)(3)(B)(i) of the Act and § 435.555(c) direct that determinations of short-term hardship be made under procedures established by the State. States electing to allow short-term hardship exceptions will be required to establish and document processes and procedures and make any corresponding technical edits to relevant systems (for example, eligibility and enrollment systems) necessary to effectuate short-term hardship exceptions described at § 435.555(d). Required processes and procedures include the method and timeframe by which an applicable individual or an individual acting on behalf of the

applicable individual may request a short-term hardship exception under § 435.555(d)(1) and (4) and the timely process by which the State will determine whether such requests will be granted. We estimate a one-time burden of 116 hours per jurisdiction to accomplish these tasks. Of the 116 hours, we estimate it will take 80 hours at \$90.08/hr for a Business and

Financial Operations analyst to perform this task, 32 hours at \$99.66/hr for a Computer Programmer to implement the technical changes to the associated system, and 4 hours at \$128.00/hr for a General and Operations Manager to review and provide oversight. In aggregate we estimate a one-time burden of 5,104 hours (116 hours × 44 jurisdictions) at a cost of \$479,931 (44

× [(80 hr × \$90.08/hr) + (32 hr × \$99.66/hr) + (4 hr × \$128.00/hr)]. Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$119,983 (\$479,931 × 0.25). We have summarized the burden associated with establishing and documenting short-term hardship exceptions in Table 18.

TABLE 18: Initial State Requirements to Establish and Document Short-Term Hardship Exceptions

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	One-Time	116	5,104	Varies	479,931	359,948	119,983

As directed at § 435.555(c)(1), States electing the option for short-term hardship requests must provide notice informing applicable individuals that the State offers short-term hardship exceptions available under the circumstances described at § 435.555(d)(2) and (3), and the anticipated end date of the exception. Separately, § 435.555(c)(2) directs States to provide notice informing applicable individuals of short-term hardship exceptions available under the circumstances described at § 435.555(d)(1) and (4) and the method by which such exceptions may be requested.

States electing to allow short-term hardship exception requests will need to develop notices, as described above, to inform beneficiaries of the various circumstances under which short-term hardship exceptions are available under

§ 435.555(d), and to describe associated processes. These States will also need to establish or update the associated operational workflows to ensure individuals are notified about short-term hardships and to support required delivery modalities to individuals who receive paper notices, which is the default modality for agency communications to applicants and beneficiaries unless an individual elects to receive electronic notices as described in § 435.918 and cross-referenced in §§ 435.561(d) and 435.555(c) for communications related to community engagement. Because the mailing of paper notices is the default modality, we estimate that 75 percent of beneficiaries do not currently elect to receive electronic notices.

To comply with these requirements, we estimate that it will take a one-time burden of 80 hours at \$87.52/hr for a

Business Operations Specialist to develop or update the notice templates and update the associated workflows as necessary, 8 hours at \$128.00/hr for a General and Operations Manager to review and approve the updated notice templates and workflows, and 24 hours at \$99.66/hr for a Computer Programmer to conduct the technical changes to the associated State systems required to generate electronic notices. In aggregate, we estimate a one-time burden of 4,928 hours (112 hr × 44 jurisdictions) at a cost of \$458,367 (44 × [(80 hr × \$87.52/hr) + (24 hr × \$99.66/hr) + (8 hr × \$128.00/hr)]). Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$114,592 (\$458,367 × 0.25). We have summarized the initial burden associated with developing short-term hardship exception notices in Table 19.

TABLE 20: Initial State Requirements for Short-Term Hardship Exception Notices

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	One-Time	112	4,928	Varies	458,367	343,775	114,592

We also estimate it will take 1 minute (0.017 hr) at \$38.66/hr for a Mail Clerk to mail each of the 2 short-term hardship exception notices to 75 percent of the applicable beneficiaries (20 million total applicable beneficiaries). This results in 30 million outreach notices (20,000,000 applicable beneficiaries × 0.75 that will not elect electronic delivery × 2 notices) in the initial year. In aggregate, we estimate a

one-time burden of 510,000 hours (30,000,000 total mailings × 0.017 hr per mailing) for Mail Clerks to complete all mailings at a cost of \$19,716,600 (510,000 × \$38.66/hr). Accounting for the Federal administrative match of 50 percent, the labor burden of this requirement will cost States \$9,858,300 (\$19,716,600 × 0.50).

In addition, the mailing of the initial notices will add ancillary non-labor

costs. We assume these costs include paper, toner, envelopes, and postage (envelope weight is normally considered negligible when citing these rates and is not included) for hard-copy mailings:

- *Paper*: \$3.50 for a ream of 500 sheets. The cost for one page is \$0.007 (\$3.50/500 sheets).

- *Toner*: \$70 for 10,000 pages. The toner cost per page is \$0.007 (\$70/10,000 pages).
- *Envelope*: Bulk envelope costs are \$440 for 10,000 envelopes or \$0.044 per envelope.
- *Postage*: The cost of first-class metered mail is \$0.73 per letter up to 1 ounce. We estimate that a sheet of paper weighs 0.16 ounces (10.0 lb/1,000 sheets

× 16 oz/lb), and do not anticipate additional postage for mailings in excess of 1 ounce.

We estimate the aggregate cost per mailed notice is \$0.802 [(\$0.007 for paper × 2 pages) + (\$0.007 for toner × 2 pages) + \$0.73 for postage + \$0.044 per envelope]. Assuming 30 million initial mailings in the initial year, we assume

non-labor ancillary costs of \$24,060,000 (30,000,000 × \$0.802). Accounting for the Federal administrative match of 50 percent, the non-labor burden of this requirement will cost States \$12,030,000 (\$24,060,000 × 0.50). We have summarized the initial burden associated with mailing short-term hardship exception notices in Table 20.

TABLE 20: Initial Mailing State Requirements for Short-Term Hardship Exception Notices

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Mailing Notices (Labor-Burden)	44 Jurisdictions	30,000,000	One-Time	0.017	510,000	38.66	19,716,600	9,858,300	9,858,300
Ancillary Costs (Non-Labor Burden)	44 Jurisdictions	30,000,000	One-Time	n/a	n/a	n/a	24,060,000	12,030,000	12,030,000
Total Burden	44 Jurisdictions	30,000,000	One-Time	Varies	Varies	Varies	43,776,600	21,888,300	21,888,300

States will also need to conduct ongoing annual maintenance of short-term hardship exception notice templates and the associated operational workflows to ensure continued compliance with required delivery modalities and timing. We estimate this ongoing annual activity will require approximately 28 hours per State (one-quarter of the 112-hour one-time effort) to review, update, and implement minor policy, operational, and technical

changes to notices and delivery workflows. Of the 28 hours, this includes 20 hours at \$87.52/hr for a Business Operations Specialist to update notices and workflows, 2 hours at \$128.00/hr for a General and Operations Manager to review and approve updates, and 6 hours at \$99.66/hr for a Computer Programmer to make necessary technical adjustments to the State's electronic data collection methods.

In aggregate, we estimate an annual burden of 1,232 hours (28 hr × 44 jurisdictions) at a cost of \$114,592 (44 × [(20 hr × \$87.52/hr) + (6 hr × \$99.66/hr) + (2 hr × \$128.00/hr)]). Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$28,648 (\$114,592 × 0.25). We have summarized the ongoing burden associated with maintaining short-term hardship exception notices in Table 21.

TABLE 21: Annual State Maintenance Requirements for Short-Term Hardship Exception Notices

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	Annual	Varies	1,232	Varies	114,592	85,944	28,648

In addition, we continue to estimate 1 minute (0.017 hr) at \$38.66/hr for a Mail Clerk to process and mail each beneficiary notice. We assume that the initial estimate of 15 million beneficiaries that receive paper notices will be moderately reduced in subsequent years as more beneficiaries opt to receive their notices electronically. On an ongoing basis we assume that 11.25 million beneficiaries

(0.75 × 11,250,000) will need to be mailed 2 paper short-term hardship exception notices. For the combined 22.5 million beneficiary notices (11,250,000 × 2), this equals 382,500 hours annually (22,500,000 mailings × 0.017 mailings/hr) at an annual cost of \$14,787,450 (382,500 hours × \$38.66/hr). Accounting for the Federal administrative match of 50 percent, the

annual labor cost to States is \$7,393,725 (\$14,787,450 × 0.50).

In addition, the ongoing mailing of the notices will add ancillary annual non-labor costs associated with paper, toner, envelopes, and postage. Assuming 22.5 million mailings annually at a cost of \$0.802 [(\$0.007 for paper × 2 pages) + (\$0.007 for toner × 2 pages) + \$0.73 for postage + \$0.044 per envelope], we estimate an additional

aggregate annual non-labor cost of \$18,045,000 (22,500,000 × \$0.802). Accounting for the Federal administrative match of 50 percent, the

non-labor burden of this requirement will cost States \$9,022,500 (\$18,045,000 × 0.50). We have summarized the ongoing State burden associated with

mailing short-term hardship exception notices in Table 22.

TABLE 22: Ongoing State Requirements for Mailing Short-Term Hardship Exception Notices – Annual Updates

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Mailing Notices (Labor Burden)	44 Jurisdictions	22,500,000	Annual	38.66	382,500	Varies	14,787,450	7,393,725	7,393,725
Ancillary Costs (Non-Labor Burden)	44 Jurisdictions	22,500,000	Annual	n/a	n/a	n/a	18,045,000	9,022,500	9,022,500
Total Burden	44 Jurisdictions	22,500,000	Annual	Varies	Varies	Varies	32,832,450	16,416,225	16,416,225

Beyond notices, States will also have additional burden associated with requesting short-term hardships as described at § 435.555(d)(2) and (3).

Emergency or Disaster Exception: The emergency or disaster-related exception, codified at § 435.555(d)(2) exists when an emergency or disaster is declared by the President under the National Emergencies Act or the Robert T. Stafford Disaster and Emergency Assistance Act. For emergencies declared under the National Emergencies Act (NEA), States must notify CMS timely of its plan to effectuate a short-term hardship exception at § 435.555(d)(2)(ii) in which the State identifies its inclusion in the scope of an NEA-declared emergency, how the emergency affects the ability of applicable individuals to demonstrate community engagement, either in a particular county (or equivalent unit of local government), multiple counties, or statewide, and the anticipated duration

of this effect on applicable individuals. Moreover, for Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act)-related declarations, in the event States would like extension of the exception beyond the duration described at § 435.555(d)(2)(iv), States must submit a notification to provide information in support of such extension.

In 2025, the 44 jurisdictions with populations subject to community engagement experienced nine NEA declarations and 44 Stafford Act Major Disaster or Emergency declarations.^{123 124} Of the 44 Stafford Act declarations, we estimate that approximately 11, or 25 percent, may result in a State requesting an extension of the short-term hardship exception. In total, we estimate that there will be 20 emergency or disaster declarations (nine NEA declarations + 11 Stafford Act declarations) annually that would require a State to submit a request to

CMS for either an exception or an extension.

We estimate it will require 22 hours annually to compile the necessary information and to request each emergency or disaster-related short-term hardship exception or exception extension to CMS. We estimate that it will take 20 hours at \$87.52/hr for a Business Operations Specialist to perform the task and 2 hours at \$128.00/hr for a General and Operations Manager to review the data and submit the short-term hardship requests. We estimate a total burden of 440 hours (22 hr/response × 20 responses) at a cost of \$40,128 (20 responses × [(20 hr/response × \$87.52/hr) + (2 hr/response × \$128.00/hr)]). Accounting for the Federal administrative match of 50 percent, we estimate that this requirement will cost States \$20,064 (\$40,128 × 0.50). We have summarized the total burden in Table 23.

¹²³ FEMA, Disaster Declarations Summaries—v2: <https://www.fema.gov/openfema-data-page/disaster-declarations-summaries-v2>.

¹²⁴ Brennan Center for Justice, Declared National Emergencies Under the National Emergencies Act: <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act>.

TABLE 23: Summary of State Burden for Short-Term Hardship Exception Notifications for Emergency or Disaster Declarations

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
20 Jurisdictions	20	Annual	22	440	Varies	40,128	20,064	20,064

Unemployment Hardship Exception: The unemployment-related short-term hardship exception, implemented at § 435.555(d)(3), exists when the unemployment rate in a county or equivalent unit of local government is at or above the lesser of 8 percent or 1.5 times the national unemployment rate. As noted, this short-term hardship exception is contingent on a State first making a request of CMS relating to this circumstance.

To submit the necessary documentation to support the unemployment-related short-term hardship exception, we expect that a State will have to assess the circumstances within a county or equivalent unit of local government and then compile the necessary information to submit to CMS. Based on an analysis

of 2024 county-level unemployment statistics, and by using BLS' 2024 average unemployment rate of 4.0 percent, we assume that around 23 of the applicable States will have at least one county that.¹²⁵ ¹²⁶ Not all potentially eligible States will decide to request such an exception from CMS, whereas some States with multiple counties meeting an unemployment threshold may submit more. In total, we estimate that annually there would be 40 unemployment-related short-term hardship exception requests across 20 State respondents.

It will require between 84 and 104 hours annually to compile the necessary information and to report each unemployment-related short-term hardship exception to CMS. Of that range, we estimate that it will take

between 80 and 100 hours at \$87.52/hr for a Business Operations Specialist to perform the task and 4 hours at \$128.00/hr for a General and Operations Manager to review the data and submit the short-term hardship requests. To avoid underestimating our burden analysis, we are using the high end of our estimates to score the PRA-related impact of the reporting requirements. In this regard we estimate a total burden of 4,160 hours (104 hr/response × 40 responses) at a cost of \$370,560 (40 responses × [(100 hr/response × \$87.52/hr) + (4 hr/response × \$128.00/hr)]). Accounting for the Federal administrative match of 50 percent, we estimate that this requirement will cost States \$185,280 (\$370,560 × 0.50). We have summarized the total burden in Table 24.

TABLE 24: Summary of State Burden for Short-Term Hardship Exception Requests for High Unemployment

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
20 Jurisdictions	40	Annual	104	4,160	Varies	370,560	185,280	185,280

¹²⁵ US Bureau of Labor Statistics LAUS 2024 Annual Averages. Released April 18, 2025. Accessed February 2026. <https://www.bls.gov/lau/laucnty24.xlsx>.

¹²⁶ US Bureau of Labor Statistics Regional & State Unemployment 2024 Annual Averages (USDLS-25-0294): Accessed February 2026. <https://www.bls.gov/news.release/srgune.nr0.htm>.

Other Hardship Exceptions: For short-term hardship exceptions related to circumstances in which the individual alleges hardship due to the receipt of institutional/hospital services or other services, or in cases in which an individual alleges he or she (or a dependent) must travel outside of the individual's community for treatment of a medical condition, CMS directs under § 435.555(c)(2) that States electing the short-term hardship exception must notify applicable individuals of the method by which a short-term hardship exception may be requested. These methods will be variable across States, but we estimate, on average, it would take 1 hour at \$12.92/hr for an applicable individual, or an individual acting on behalf of an applicable individual, to document and submit their short-term hardship exception

request to a State. Calculating the burden for the applicable individuals that will request short-term hardship exceptions available under § 435.555(d)(1) and (4) is subject to significant approximation. In 2022 there were approximately 8.8 million non-COVID acute inpatient or ICU stays in Medicaid expansion States.¹²⁷ We assume that approximately 25 percent or 2.2 million (8.8 million × .25) of those stays were for Medicaid expansion adults subject to community engagement. Further, using Healthcare Cost and Utilization Project data, we see that the mean Medicaid length of stay (LOS) in 2023 was 5 days.¹²⁸ Hospital LOS data is typically right-skewed,¹²⁹ meaning that fewer than half of stays have an LOS longer than the mean. Therefore, we assume that only 25 percent of stays for applicable

individuals, or 550,000 (2.2 million × .25) will be of a duration that may lead an applicable individual to consider requesting a short-term hardship exception. Of those 550,000 stays, we estimate that 300,000 will result in a short-term hardship exception being requested. We further assume this number includes those individuals that may need to travel outside their community for treatment of a medical condition. In aggregate, we estimate an annual burden of 300,000 hours (300,000 short-term hardship exception requests × 1 hr per request) at a cost of \$3,876,000 (300,000 hr × \$12.92/hr) for an applicable individual, or an individual acting on behalf of an applicable individual, to request short-term hardship exception requests. We have summarized the total burden in Table 25.

TABLE 25: Summary of Beneficiary Burden for Short-Term Hardship Exception Requests for Institutional/Hospital Services or Travel outside of the Individual's Community for Treatment of a Medical Condition

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)
300,000 Beneficiaries	300,000	Annual	1	300,000	12.92	3,876,000

As required at §§ 435.561(b)(3)(iv)(A)–(B), States will also need to send periodic outreach notices to beneficiaries when a hardship exception under § 435.555(a) is deselected and to provide notice of the anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3). We previously estimated in this ICR that all 44 jurisdictions will elect to include in their SPAs the short-term hardship exception to the community engagement requirement. Because we have no reliable way of estimating how many jurisdictions will deselect the hardship exception in a given year and thus will need to send notices to beneficiaries informing them of the deselection of the hardship exception, we are not estimating burden for this requirement. To estimate the number of jurisdictions that will need to provide notice of the anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3), we rely on our previous estimate earlier in this ICR that 20 jurisdictions will request an emergency or disaster exception and 20

jurisdictions will request a high unemployment exception. For the purpose of burden estimation, we estimate that there will be no overlap in the jurisdictions that request an emergency or disaster exception and a high unemployment exception, although it is possible that the same jurisdiction could request both exceptions. As such, we estimate 40 jurisdictions will need to send notices to beneficiaries to inform them of the anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3). We estimate that the 20 million beneficiaries that will receive notices of the potential availability of a short-term hardship exception cited earlier in this ICR are equally divided amongst the jurisdictions, and thus 18.2 million beneficiaries ((20 million beneficiaries/ 44 jurisdictions) × 40 jurisdictions) will reside in the 40 jurisdictions that will need to send notices of the anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3). We estimate it will take 1 minute

(0.017 hr) at \$38.66/hr for a Mail Clerk to mail the notice of anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3) to 18.2 million beneficiaries. In aggregate, we estimate an annual burden of 309,400 hours (18,200,000 notices × 0.017 hr per mailing) for Mail Clerks to complete all mailings at a cost of \$11,961,404 (309,400 hr × \$38.66/hr). Accounting for the Federal administrative match of 50 percent, the labor burden of this requirement will cost States \$5,980,702 (\$11,961,404 × 0.50). In addition, the mailing of notices about the anticipated expiration of a short-term hardship event described at § 435.555(d)(2) and (3), will add ancillary annual non-labor costs associated with paper, toner, envelopes, and postage. Assuming 18.2 million mailings annually at a cost of \$0.802 [(\$0.007 for paper × 2 pages) + (\$0.007 for toner × 2 pages) + \$0.73 for postage + \$0.044 per envelope], we estimate an additional aggregate annual non-labor cost of \$14,596,400 (18,200,000 mailings

¹²⁷ Acute Care Services Provided to the Medicaid and CHIP Population, January 5, 2024. Acute Care Services Provided to the Medicaid and CHIP Population.

¹²⁸ Agency for Healthcare Research and Quality (AHRQ), Healthcare Cost and Utilization Project (HCUP) Fast Stats, National Hospital Utilization & Costs, 2023. HCUP Fast Stats Data Tools—

Healthcare Cost and Utilization Project (HCUP) Fast Stats.

× \$0.802). Accounting for the Federal administrative match of 50 percent, the non-labor burden of this requirement will cost States \$7,298,200 (\$14,596,400

× 0.50). We have summarized the ongoing State burden associated with mailing notices about the anticipated expiration of a short-term hardship

event described at § 435.555(d)(2) and (3) in Table 26.

TABLE 26: Annual Mailing State Requirements for Expiration of a Short-Term Hardship Event Described in § 435.555(d)(2) and (3)

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Mailing Notices (Labor-Burden)	40 Jurisdictions	18,200,000	Annual	0.017	309,400	38.66	11,961,404	5,980,702	5,980,702
Ancillary Costs (Non-Labor Burden)	40 Jurisdictions	18,200,000	Annual	n/a	n/a	n/a	14,596,400	7,298,200	7,298,200
Total Burden	40 Jurisdictions	18,200,000	Annual	Varies	Varies	Varies	26,557,804	13,278,902	13,278,902

7. ICRs Regarding State Requirements for Outreach (§ 435.561) and Noncompliance (§ 435.558).

The following changes will be submitted to OMB for approval under control number 0938–1147 (CMS–10410).

As discussed in section II.L. of this IFC, State Medicaid agencies are required to develop (or update) and disseminate standardized, targeted communications notices to certain individuals about the requirement to demonstrate community engagement under section 1902(xx) of the Act. States must also implement the operational processes needed to deliver those communications in a timely manner. Among the communications, under new § 435.561, States must provide outreach notices to individuals eligible for or enrolled under § 435.119 and to certain individuals covered through specified section 1115 demonstrations. While CMS will not be providing States with templates for these notices, States must send outreach at the times specified at § 435.561(b), include the content required by § 435.561(c), and deliver outreach notices through at least two modalities as required by § 435.561(d) (regular mail or, if elected by the individual, electronic delivery consistent with § 435.918, plus at least one additional modality such as an electronic account, telephone, text message, or other commonly available electronic means), consistent with the

plain language and accessibility standards at § 435.905(b). States may also coordinate outreach with other beneficiary communications, such as eligibility determination notices under § 435.917.

In addition, under new § 435.558, when a State cannot verify compliance with, or an exception (for deemed compliance), or exclusion from the community engagement requirement, the State must issue a notice of noncompliance, in the form and manner outlined at § 435.558(c), that provides at least 30 calendar days for the individual to demonstrate compliance or an exception/exclusion. This requirement will likely create additional information collection activities related to preparing and sending the notice, tracking the response period, and documenting outcomes prior to any denial or disenrollment, including advance notice and fair hearing rights. At renewal, States may choose when to send the noncompliance notice relative to the pre-populated renewal form but must still generate and issue the notice and track responses.

These requirements also leverage existing State communication infrastructure, including online accounts and portals. In particular, § 435.561(d)(2)(i) (delivery through the individual's electronic account) extends State's Medicaid website obligations under § 435.1200(f), including accessibility consistent with § 435.905(b).

States will need to develop or update outreach and noncompliance notice templates and establish or update the associated operational workflows to support required delivery modalities and timing. For both outreach and noncompliance notices, these operational workflows will include mailing paper copies to the subset of individuals who receive paper notices. Since mailing paper notices is the default modality under § 435.561(d), we estimate that 75 percent of beneficiaries do not elect to use electronic notices.

To comply with these requirements, we estimate that it will take a one-time burden of 80 hours at \$87.52/hr for a Business Operations Specialist to develop or update the notice templates and update the associated workflows as necessary, 8 hours at \$128.00/hr for a General and Operations Manager to review and approve the updated notice templates and workflows, and 24 hours at \$99.66/hr for a Computer Programmer to conduct the technical changes to the State electronic data collection means. In aggregate, we estimate a one-time burden of 4,928 hours (112 hr × 44 jurisdictions) at a cost of \$458,367 (44 × [(80 hr × \$87.52/hr) + (24 hr × \$99.66/hr) + (8 hr × \$128.00/hr)]). Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$114,592 (\$458,367 × 0.25). We have summarized the initial State outreach and noncompliance notice burden in Table 27.

TABLE 27: Initial State Requirements for Outreach and Noncompliance Notices

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	One-Time	Varies	4,928	Varies	458,367	343,775	114,592

We also estimate it will take 1 minute (0.017 hr) at \$38.66/hr for a Mail Clerk to mail paper materials to 75 percent of the applicable beneficiaries (20 million total applicable beneficiaries). This results in 15 million outreach notices (20,000,000 applicable beneficiaries $\times$ 0.75 that will not elect electronic delivery), as well as 6 million noncompliance notices (0.75 $\times$ the 8,000,000 applicable individuals whose eligibility could not be verified *ex parte*), or 21 million mailings in the initial year. In aggregate, we estimate a one-time burden of 357,000 hours (21,000,000 total mailings $\times$ 0.017 hr per

mailing) for Mail Clerks to complete all mailings at a cost of \$13,801,620 (357,000 hr $\times$ \$38.66/hr). Accounting for the Federal administrative match of 50 percent, the labor burden of this requirement will cost States \$6,900,810 (\$13,801,620 $\times$ 0.50).

In addition, the mailing of the initial notices will add ancillary non-labor costs. We assume these costs include paper, toner, envelopes, and postage (envelope weight is normally considered negligible when citing these rates and is not included) for hard-copy mailings. Using the same assumptions as described for mailing short-term

hardship request notices in ICR 6, we estimate the aggregate cost per mailed notice is \$0.802 [(\$0.007 for paper $\times$ 2 pages) + (\$0.007 for toner $\times$ 2 pages) + \$0.73 for postage + \$0.044 per envelope]. Assuming 21 million initial mailings in the initial year, we assume non-labor ancillary costs of \$16,842,000 (21,000,000 $\times$ \$0.802). Accounting for the Federal administrative match of 50 percent, the non-labor burden of this requirement will cost States \$8,421,000 (\$16,842,000 $\times$ 0.50). We have summarized the ongoing, total State outreach and noncompliance notice burden in Table 28.

TABLE 28: Initial Mailing State Requirements for Outreach and Noncompliance Notices

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Mailing Notices (Labor Burden)	44 Jurisdictions	21,000,000	One-Time	0.017	357,000	38.66	13,801,620	6,900,810	6,900,810
Ancillary Costs (Non-Labor Burden)	44 Jurisdictions	21,000,000	One-Time	n/a	n/a	n/a	16,842,000	8,421,000	8,421,000
Total Burden	44 Jurisdictions	21,000,000	One-Time	Varies	Varies	Varies	30,643,620	15,321,810	15,321,810

States will also need to conduct ongoing annual maintenance of outreach and noncompliance notice templates and the associated operational workflows to ensure continued compliance with required outreach delivery modalities and timing. We estimate this ongoing annual activity will require approximately 28 hours per State (one-quarter of the 112-hour one-time effort) to review, update, and implement minor policy, operational,

and technical changes to notices and delivery workflows. Of the 28 hours, this includes 20 hours at \$87.52/hr for a Business Operations Specialist to update notices and workflows, 2 hours at \$128.00/hr for a General and Operations Manager to review and approve updates, and 6 hours at \$99.66/hr for a Computer Programmer to make necessary technical adjustments to the State's electronic data collection methods.

In aggregate, we estimate an annual burden of 1,232 hours (28 hr $\times$ 44 jurisdictions) at a cost of \$114,592 (44 $\times$ [(20 hr $\times$ \$87.52/hr) + (6 hr $\times$ \$99.66/hr) + (2 hr $\times$ \$128.00/hr)]. Accounting for the Federal administrative match of 75 percent, the requirement will cost States \$28,648 (\$114,592 $\times$ 0.25). We have summarized the ongoing burden for State maintenance of outreach and noncompliance notices in Table 29.

TABLE 29: Annual State Maintenance Requirements for Outreach and Noncompliance Notices

No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
44 Jurisdictions	44	Annual	Varies	1,232	Varies	114,592	85,944	28,648

In addition, we continue to estimate 1 minute (0.017 hr) at \$38.66/hr for a Mail Clerk to process and mail each beneficiary notice. We assume that the initial estimate of 15 million beneficiaries that receive paper notices will be moderately reduced in subsequent years as more beneficiaries opt to receive their notices electronically. On an ongoing basis we assume that 11.25 million beneficiaries ($0.75 \times 15,000,000$) will need to be mailed paper outreach notices, and that 4.50 million beneficiaries ($0.75 \times$

6,000,000) will need to be mailed noncompliance notices on an ongoing basis. For the combined 15.750 million beneficiary notices ($11,250,000 + 4,500,000$), this equals 267,750 hours annually ($15,750,000 \text{ mailings} \times 0.017 \text{ mailings/hr}$) at an annual cost of \$10,351,215 ($267,750 \text{ hours} \times \$38.66/\text{hr}$). Accounting for the Federal administrative match of 50 percent, the annual labor cost to States is \$5,175,608.

In addition, the ongoing mailing of the notices will add ancillary annual non-labor costs associated with paper,

toner, envelopes, and postage. Assuming 15.75 million mailings annually at a cost of \$0.802 [$(\$0.007 \text{ for paper} \times 2 \text{ pages}) + (\$0.007 \text{ for toner} \times 2 \text{ pages}) + \$0.73 \text{ for postage} + \$0.044 \text{ per envelope}$], we estimate an additional aggregate annual non-labor cost of \$12,631,500. Accounting for the Federal administrative match of 50 percent, the non-labor burden of this requirement will cost States \$6,315,750 ($\$12,631,500 \times 0.50$). We have summarized the ongoing, annual State outreach burden in Table 30.

TABLE 30: Ongoing State Requirements for Outreach – Annual Updates

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Mailing (Labor Burden)	44 Jurisdictions	15,750,000	Annual	38.66	258,333	Varies	10,351,215	5,175,608	5,175,608
Ancillary Costs (Non-Labor Burden)	44 Jurisdictions	15,750,000	Annual	n/a	n/a	n/a	12,631,500	6,315,750	6,315,750
Total Burden	44 Jurisdictions	15,750,000	Annual	Varies	Varies	Varies	22,982,715	11,491,358	11,491,358

States will also need to send notices to beneficiaries to inform them of the loss of a beneficiary's status as a specified excluded individual under § 435.554. We estimate 44 jurisdictions will need to send notices to beneficiaries to inform them of the loss of a beneficiary's status as a specified excluded individual under § 435.554. Per data from our "Medicaid and CHIP Leavers and Coverage Transitions" report, 3.02 million adult non-expansion beneficiaries left Medicaid between March 31, 2023, and December 31, 2023.¹³⁰ We therefore use 3.02 million beneficiaries as a proxy for the number of beneficiaries that will need to be informed of the loss of a beneficiary's status as a specified excluded individual under § 435.554 in a given year, but acknowledge that this number may be higher than the actual number

of adult beneficiaries who may lose their status as a specified excluded individual in a given year, given the population differences between these two groups. We estimate it will take 1 minute (0.017 hr) at \$38.66/hr for a Mail Clerk to mail the notice of the loss of a beneficiary's status as a specified excluded individual under § 435.554 to 3.02 million beneficiaries. In aggregate, we estimate an annual burden of 51,340 hours ($3,020,000 \text{ notices} \times 0.017 \text{ hr per mailing}$) for Mail Clerks to complete all mailings at a cost of \$1,984,804 ($51,340 \text{ hr} \times \$38.66/\text{hr}$). Accounting for the Federal administrative match of 50 percent, the labor burden of this requirement will cost States \$992,402 ($\$1,984,804 \times 0.50$).

In addition, the mailing of notices to beneficiaries to inform them of the loss of a beneficiary's status as a specified

excluded individual under § 435.554 will add ancillary annual non-labor costs associated with paper, toner, envelopes, and postage. Assuming 3.02 million mailings annually at a cost of \$0.802 [$(\$0.007 \text{ for paper} \times 2 \text{ pages}) + (\$0.007 \text{ for toner} \times 2 \text{ pages}) + \$0.73 \text{ for postage} + \$0.044 \text{ per envelope}$], we estimate an additional aggregate annual non-labor cost of \$2,422,040 ($3,020,000 \text{ mailings} \times \$0.802$). Accounting for the Federal administrative match of 50 percent, the non-labor burden of this requirement will cost States \$1,211,020 ($\$2,422,040 \times 0.50$). We have summarized the ongoing State burden associated with mailing notices to beneficiaries to inform them of the loss of a beneficiary's status as a specified excluded individual under § 435.554 in Table 31.

¹³⁰ See "Leavers, excluding death and moving to Medicaid/CHIP in another state: Count" column in chart on page 7. "Medicaid & CHIP Leavers and Coverage Transitions: By Eligibility Category and

Home & Community-Based Services (HCBS) 1915(c) Waiver Enrollment, March 31, 2023–December 31, 2023." CMS. November 2024. <https://www.medicaid.gov/resources-for-states/downloads/>

eligibility-group-leavers-transitions-novmbr-2024-release.pdf.

TABLE 31: Ongoing State Requirements for Outreach – Loss of a Beneficiary’s Status as a Specified Excluded Individual

Requirement	No. Respondents	Total Responses	Frequency	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Mailing (Labor Burden)	44 Jurisdictions	3,020,000	Annual	0.017	51,340	38.66	1,984,804	992,402	992,402
Ancillary Costs (Non-Labor Burden)	44 Jurisdictions	3,020,000	Annual	n/a	n/a	n/a	2,422,040	1,211,020	1,211,020
Total Burden	44 Jurisdictions	3,020,000	Annual	Varies	Varies	Varies	4,406,844	2,203,422	2,203,422

D. Burden Summary

Table 32 summarizes the PRA-related burden associated with this rule’s community engagement requirement.

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TABLE 32: Summary of Total Burden for the Community Engagement Requirement

Requirement	No. Respondents	Total Responses	Frequency	OMB Control Number (CMS ID No.)	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
One-Time Burden for Monitoring Community Engagement (PI data)	44 Jurisdictions	44	One-Time	0938-1148 (CMS-10398 #35)	162	7,128	Varies	797,350	598,012	199,338
One-Time Burden for Monitoring Community Engagement (EP data)	44 Jurisdictions	44	One-Time	0938-1148 (CMS-10398 #66)	162	7,128	Varies	797,350	598,012	199,338
One-Time Burden for Monitoring Community Engagement (T-MSIS data)	44 Jurisdictions	44	One-Time	0938-0345 (CMS-R-284)	500	22,000	132.444	2,913,680	2,185,260	728,420
Annual Reporting for Monitoring Community Engagement (PI data)	44 Jurisdictions	1,056	Monthly	0938-1148 (CMS-10398 #35)	4	4,224	Varies	488,907	366,680	122,227
Annual Reporting for Monitoring Community Engagement (EP data)	44 Jurisdictions	1,056	Monthly	0938-1148 (CMS-10398 #66)	4	4,224	Varies	488,907	366,680	122,227
Good Faith Effort Exemption Request and Workplan	10 Jurisdictions	10	One-Time	0938-1148 (CMS-10398 #100)	28	280	Varies	26,125	13,063	13,063
Good Faith Quarterly Reporting	2 Jurisdictions	12	Quarterly	0938-1148 (CMS-10398 #100)	12.5	150	Varies	13,371	6,686	6,686
State Plan Compliance	44 Jurisdictions	44	One-Time	0938-1188 (CMS-10434 #15)	44	1,936	Varies	176,563	88,282	88,282
Verification Plan	44 Jurisdictions	44	One-Time	0938-1148 (CMS-10398 #11)	124	5,456	Varies	505,226	252,613	252,613
Verification Plan Updates	5 Jurisdictions	5	Annual	0938-1148 (CMS-10398 #11)	11	55	Varies	5,211	2,606	2,606

Requirement	No. Respondents	Total Responses	Frequency	OMB Control Number (CMS ID No.)	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Beneficiary Application Updates (Single Streamlined Application)	44 Jurisdictions	44	One-Time	0938-1147 (CMS-10410)	116	5,104	Varies	479,931	359,948	119,983
Beneficiary Application Updates (Presumptive Eligibility Applications)	39 Jurisdictions	39	One-Time	0938-1147 (CMS-10410)	64	2,496	Varies	239,722	179,791	59,931
Beneficiary Burden for Community Engagement Data Submission ¹³¹	8,800,000 beneficiaries	17,600,000	Semiannual	0938-1147 (CMS-10410)	2	35,200,000	12.92	454,784,000	N/A	N/A
Summary of New Applicant Burden for Community Engagement Information Submission ¹³²	3,750,000 beneficiaries	3,750,000	Annual	0938-1147 (CMS-10410)	2	7,500,000	12.92	96,900,000	N/A	N/A
Initial State Requirements to Establish and Document Short-Term Hardship Exceptions	44 Jurisdictions	44	One-Time	0938-1148 (CMS-10398 #101)	116	5,104	Varies	479,931	359,948	119,983
Initial State Requirements for Short-Term Hardship Exception Notices	44 Jurisdictions	44	One-Time	0938-1148 (CMS-10398 #101)	Varies	4,928	Varies	458,367	343,775	114,592
Initial Mailing State Requirements for Short-Term Hardship Exception Notices : Total Labor Burden	44 Jurisdictions	30,000,000	One-Time	0938-1148 (CMS-10398 #101)	0.017	510,000	38.66	19,716,600	9,858,300	9,858,300

¹³¹ This burden estimate is included in the total cost calculation for this table but it does not have a federal or state share associated with it. See Table 15 for additional information on this requirement.

¹³² This burden estimate is included in the total cost calculation for this table but it does not have a federal or state share associated with it. See Table 16 for additional information on this requirement.

Requirement	No. Respondents	Total Responses	Frequency	OMB Control Number (CMS ID No.)	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Initial Mailing State Requirements for Short-Term Hardship Exception Notices: Total Non-Labor Burden	44 Jurisdictions	30,000,000	One-Time	0938-1148 (CMS-10398 #101)	n/a	n/a	n/a	24,060,000	12,030,000	12,030,000
Annual State Maintenance Requirements for Short-Term Hardship Exception Notices	44 Jurisdictions	44	Annual	0938-1148 (CMS-10398 #101)	Varies	1,232	Varies	114,592	85,944	28,648
Ongoing State Requirements for Mailing Short-Term Hardship Exception Notices – Annual Updates : Total Labor Burden	44 Jurisdictions	22,500,000	Annual	0938-1148 (CMS-10398 #101)	38.66	382,500	Varies	14,787,450	7,393,725	7,393,725
Ongoing State Requirements for Mailing Short-Term Hardship Exception Notices – Annual Updates : Total Non-Labor Burden	44 Jurisdictions	22,500,000	Annual	0938-1148 (CMS-10398 #101)	n/a	n/a	n/a	18,045,000	9,022,500	9,022,500
Short-Term Hardship Exception Notifications for Emergencies or Disasters	20 Jurisdictions	20	Annual	0938-1148 (CMS-10398 #101)	22	440	Varies	40,128	20,064	20,064
Short-Term Hardship Exception Requests for Unemployment	20 Jurisdictions	40	Annual	0938-1148 (CMS-10398 #101)	104	4,160	Varies	370,560	185,280	185,280

Requirement	No. Respondents	Total Responses	Frequency	OMB Control Number (CMS ID No.)	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Beneficiary Burden for Short-Term hardship Exception Requests for Institution/ Inpatient Stays or Travel ¹³³	300,000 individuals	300,000	Annual	0938-1148 (CMS-10398 #101)	1	300,000	12.92	3,876,000	N/A	N/A
Annual Mailing State Requirements for Expiration of a Short-Term Hardship Event Described in § 435.555(d)(2) and (3): Total Labor Burden	44 Jurisdictions	18,200,000	Annual	0938-1148 (CMS-10398 #101)	0.017	309,400	38.66	11,961,404	5,980,702	5,980,702
Annual Mailing State Requirements for Expiration of a Short-Term Hardship Event Described in § 435.555(d)(2) and (3): Total Non-Labor Burden	44 Jurisdictions	18,200,000	Annual	0938-1148 (CMS-10398 #101)	n/a	n/a	n/a	14,596,400	7,298,200	7,298,200
Initial State Requirements for Outreach and Noncompliance Notices	44 Jurisdictions	44	One-Time	0938-1147 (CMS-10410)	Varies	4,928	Varies	458,367	343,775	114,592
Initial Mailing State Requirements for Outreach and Noncompliance Notices : Total Labor Burden	44 Jurisdictions	21,000,000	One-Time	0938-1147 (CMS-10410)	0.017	357,000	38.66	13,801,620	6,900,810	6,900,810
Initial Mailing State Requirements for Outreach and Noncompliance Notices: Total Non Labor Burden	44 Jurisdictions	21,000,000	One-Time	0938-1147 (CMS-10410)	n/a	n/a	n/a	16,842,000	8,421,000	8,421,000

¹³³ This burden estimate is included in the total cost calculation for this table but it does not have a federal or state share associated with it. See Table 25 for additional information on this requirement.

Requirement	No. Respondents	Total Responses	Frequency	OMB Control Number (CMS ID No.)	Time per Response (hr)	Total Time (hr)	Wage (\$/hr)	Total Cost (\$)	Federal Share (\$)	State Share (\$)
Annual State Maintenance Requirements for Communication Notices	44 Jurisdictions	44	Annual	0938-1147 (CMS-10410)	Varies	1,232	Varies	114,592	85,944	28,648
State Requirements for Outreach – Annual Updates: Total Labor Burden	44 Jurisdictions	15,575,000	Annual	0938-1147 (CMS-10410)	38.66	258,333	Varies	10,351,215	5,175,608	5,175,608
State Requirements for Outreach – Annual Updates: Total Non-Labor Burden	44 Jurisdictions	15,750,000	Annual	0938-1147 (CMS-10410)	n/a	n/a	n/a	12,631,500	6,315,750	6,315,750
Ongoing State Requirements for Outreach – Loss of a Beneficiary’s Status as a Specified Excluded Individual	44 Jurisdictions	3,020,000	Annual	0938-1147 (CMS-10410)	.017	51,340	38.66	1,984,804	992,402	992,402
Ongoing State Requirements for Outreach – Loss of a Beneficiary’s Status as a Specified Excluded Individual: Total Non-Labor Burden	44 Jurisdictions	3,020,000	Annual	0938-1147 (CMS-10410)	n/a	n/a	n/a	2,422,040	1,211,020	1,211,020
TOTAL	8,800,044	132,122,722	Varies	n/a	Varies	44,692,445	Varies	725,728,913	87,042,380	83,126,538

BILLING CODE 4120–01–C**E. Submission of PRA-Related Comments**

We have submitted a copy of this IFC to OMB for its review of the rule’s information collection requirements. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed previously, please visit the CMS website at (<https://www.cms.gov/regulations->

and-guidance/legislation/paperworkreductionactof1995/pralisting), or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this IFC and identify the rule (CMS–2454–IFC), the ICR’s CFR citation, and OMB control number.

V. Regulatory Impact Analysis**A. Statement of Need**

The changes in this IFC are necessary to align the Code of Federal Regulations (CFR) with statutory requirements set forth by section 1902(xx) of the Act as added by section 71119 (Requirement For States To Establish Medicaid Community Engagement Requirements For Certain Individuals) of the WFTC legislation, which adds a new community engagement requirement for certain adults in Medicaid.

The community engagement requirement has the potential to empower Medicaid beneficiaries through employment, education, or community service so they can escape isolation and dependency, build confidence, and achieve self-sufficiency and independence. States will be responsible for implementing and administering the new requirement in a manner that complies with this rule. CMS will provide oversight and monitor States' implementation of the new requirement, as well as outcomes related to community engagement.

This IFC specifies and explains:

- Changes to the CFR to revert certain eligibility and enrollment regulatory provisions that were suspended due to the section 71102 moratorium and are needed to implement community engagement until October 1, 2034, with the provisions in effect prior to the 2024 Eligibility and Enrollment final rule as well as conforming amendments due to the restoration of the previous CFR;

- Requirements for Medicaid applicants and beneficiaries who must demonstrate community engagement as a condition of their eligibility;

- The types of qualifying activities that satisfy the community engagement requirement and the criteria to meet an exception (be deemed compliant) or specified exclusion from the requirement;

- The steps States must take when they are unable to verify an applicable individual has met the community engagement requirement at application, renewal, or a more frequent periodic verification of compliance;

- The notice of noncompliance States must use to inform the individual how they may make a satisfactory showing to demonstrate or be deemed as demonstrating compliance or that the individual should not be subject to the requirement, as well as how the individual can reapply for coverage if they are disenrolled;

- When and how States must verify an applicable individual's compliance with the community engagement requirement and whether an individual meets an exception (for deemed compliance) or exclusion from the requirements, and the outreach and notice requirements for States;

- Where States will have options in implementing the community engagement requirement; and,

- Additional considerations for States and implications of the community engagement requirement for other existing ways that enable enrollment, such as presumptive eligibility, as well as demonstration projects authorized under section 1115 of the Act.

The IFC also describes implementation timing and establishes new State reporting requirements.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order (E.O.) 12866, "Regulatory Planning and Review"; E.O. 13132, "Federalism"; E.O. 13563, "Improving Regulation and Regulatory Review"; E.O. 14192, "Unleashing Prosperity Through Deregulation"; the Regulatory Flexibility Act (RFA) (Pub. L. 96354); section 1102(b) of the Act; section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4); and the Congressional Review Act (5 U.S.C. 804(2)).

E.O. 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts.). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

A regulatory impact analysis (RIA) must be prepared for a regulatory action that is significant under section 3(f)(1) of E.O. 12866. Based on our estimates, this IFC does meet that criterion as the aggregate amount of benefits and costs may exceed the \$100 million threshold in at least 1 year. OIRA has determined this rulemaking is significant per section 3(f)(1). Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), OIRA has also determined that this rule is major as it meets the criteria set forth in 5 U.S.C. 804(2).

C. Detailed Economic Analysis

1. Benefits

We are specifying regulatory changes at 42 CFR parts 431, 435, 438, 457, and 600 to establish a community engagement requirement for certain adults applying for or enrolled in Medicaid, and corresponding requirements added by the WFTC legislation. This IFC provides a regulatory framework that specifies the requirements for States to implement the new community engagement requirement in an efficient, feasible, and cost-effective manner.

We believe the new community engagement requirement could have the potential to produce a range of benefits across multiple stakeholders. This section examines the anticipated benefits for three principal parties implicated by the new requirement: Medicaid applicants and beneficiaries subject to the community engagement requirement, States, and the Federal government.

The bulk of the benefits and costs are associated with the change in time allocation of program participants. The White House Council of Economic Advisers (2025) found that, among able-bodied adults aged 19–64 participating in Medicaid in 2024, 49.6 percent did no work for pay at any time during the calendar year.¹³⁴ CMS invites comment on the estimation of the number of adults moved to engagement as a result of the IFC. If those with zero work are more likely to participate in Medicaid for the full calendar year than the other able-bodied adults aged 19–64, then more than 49.6 percent of able-bodied adults aged 19–64 on Medicaid in any given month did no work for pay at all during the calendar year, and even more did no work during that month. Under this IFC, such adults would either (a) not participate in Medicaid, (b) work to earn at least \$580 per month (= \$7.25 × 80 hours), (c) satisfy community engagement in another way, or (d) a combination of each. In the benefits and costs subsections of this economic analysis, we quantify benefits and costs per additional hour of work. The aggregate time allocation section multiplies dollar amounts per hour by our estimates of aggregate hours of time allocated to work as a result of the IFC.

¹³⁴ The White House Council of Economic Advisers. (June 2025). "Medicaid Community Engagement Requirements and the Value of Work." <https://www.whitehouse.gov/wp-content/uploads/2025/03/Medicaid-Community-Engagement-Requirements-and-the-Value-of-Work.pdf>. As noted later in the RIA, the 49.6 fits into the quantitative framework as support for estimates of the number adults moved to employment as a result of the IFC.

a. Medicaid Applicants and Beneficiaries Subject to the Community Engagement Requirement

Employment is recognized as an important factor in long-term beneficiary health and welfare. Existing research indicates obtaining and maintaining stable employment provides individuals with reliable income and financial stability, which in turn supports access to safe housing, nutritious food, and other resources necessary for maintaining health.¹³⁵ ¹³⁶ Additionally, research suggests the relationship between health and employment is intrinsic—and bidirectional in nature, so *negative* benefits may be experienced by some coverage-losing individuals—as mentioned earlier in section I.B.¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰

We believe a well-designed community engagement requirement may benefit individuals so that they are not dependent, demoralized, or stuck in situations that hinder their economic, physical, and mental state.

Work also creates value in the marketplace by adding to the aggregate production of goods and services, which is why employers pay for it. On an hourly basis, the value is described as the hourly marginal product of labor (MPL). MPL is often proxied by average hourly worker compensation before taxes and fringe benefits are subtracted, although MPL can exceed hourly compensation to the extent that labor or product markets are not competitive.

¹³⁵ Zafar, Q., M.A. Khan, A.Z. Warsi, and L. Iqbal. (2024). “Economic Strain and Recovery Trajectories in Mental Health: The Role of Financial Stability in Mental Health Outcomes.” *Review of Applied Management and Social Sciences*, 7(4): 345–358. <https://doi.org/10.47067/ramss.v7i4.385>.

¹³⁶ R. Gerdes, T.D. Jackson, R. Roberts, et al. (2026). “Associations Between Employment and Health Outcomes: A Systematic Review of Reviews.” *Journal of Occupational Rehabilitation*. <https://doi.org/10.1007/s10926-025-10357-5>.

¹³⁷ Han, W.J. (2024). “How longitudinal employment patterns shape health as individuals approach middle adulthood—US NLSY79 cohort.” *PLOS ONE*, 19(4), e0300245. <https://doi.org/10.1371/journal.pone.0300245>.

¹³⁸ Virtanen M, Kivimäki M, Joensuu M, Virtanen P, Elovainio M, Vahtera J. Temporary employment and health: a review. *Int J Epidemiol*. 2005 Jun;34(3):610–22. doi: 10.1093/ije/dyi024. Epub 2005 Feb 28. PMID: 15737968.

¹³⁹ Kim TJ von dem Knesebeck O. Perceived job insecurity, unemployment and depressive symptoms: a systematic review and meta-analysis of prospective observational studies. *Int Arch Occup Environ Health*. 2016 May; 89(4):561–73. doi: 10.1007/s00420-015-1107-1. Epub 2015 Dec 29. PMID: 26715495.

¹⁴⁰ Gerdes R, Jackson T.D, Roberts R, Lytvayak E, Deibert D, Dennett L, Burton AK, Gross DP, Els C, Doroshenko A, Hagtvedt R, Straube S. Associations Between Employment and Health Outcomes: A Systematic Review of Reviews. *J Occup Rehabil*. 2026 Jan 6. doi: 10.1007/s10926-025-10357-5. Epub ahead of print. PMID: 41493509.

That is, average hourly compensation has a tendency toward underestimating the expected benefit of an additional hour of work in the form of valuable goods and services produced.

Recognizing that most adults do not participate in Medicaid, and that Medicaid participants likely have earning potential below the population average and median, our estimate begins with measurement of the 25th percentile weekly earnings of full-time wage and salary workers of \$838 in the first quarter of 2026.¹⁴¹ ¹⁴² We divide this weekly rate by 40 hours to calculate an hourly pre-tax pre-benefit wage rate of \$20.95. We then scale up by a factor of 1.186 to account for fringe benefits not already included in the \$838, arriving at an hourly MPL of \$24.84.¹⁴³ This is intended to represent the productivity of the average Medicaid beneficiary induced to work, rather than the average or median worker working for a company, non-profit, or government agency that may spend time on clerical aspects of this rule.

Some of the beneficiaries are expected to fulfill the community engagement requirement by community service, work program participation, or an educational program (often expected to enhance pay in the future) rather than paid work. The fact that such activities may not be paid does not negate their social benefit. Indeed, they could be more valuable than work for those who select them. This RIA values each hour of non-paid community engagement activities at the same \$24.84 as paid work.

2. Costs

The following discussion builds on costs to States, the Federal government, and Medicaid applicants and beneficiaries that are summarized in Table 32. Costs associated with the collection of information are described in detail under section IV. of this IFC. As outlined in section IV. of this IFC, the provisions in this IFC are expected

¹⁴¹ Baxter JR, Robinson LA, and Hammitt JK. (June 2017). “Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.” Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE). https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/176806/VOT.pdf.

¹⁴² “Quartiles and selected deciles of usual weekly earnings of full-time wage and salary workers by selected characteristics,” US Bureau of Labor Statistics, last modified April 16, 2026. <https://www.bls.gov/news.release/wkyeng.t05.htm..>

¹⁴³ ASPE estimates that fringe benefits are 45.6 percent of wages. We assume that the \$838 from BLS reflects half of the fringe benefits, so that the scaling factor is $0.5 * 0.456 / (1 + 0.5 * 0.456) + 1 = 1.186$.

to impose additional costs given the significant eligibility changes to Medicaid. Demonstrating community engagement as a condition of Medicaid eligibility is not an entirely new policy for the Medicaid program; however, the scope and structure in this rule represents a significant expansion of such requirements. Given the expedited effective date of this rule following the passage of the WFTC legislation, we focus the cost analysis on three central parties to these changes: the Federal government, States, and Medicaid applicants and beneficiaries. We acknowledge that as these provisions are implemented and additional data become available, further cost implications may be identified that are not fully captured in this analysis. Moreover, the estimated costs of these provisions are not expected to be uniform. We expect these costs will vary based on differences among States’ existing State Medicaid agency program operations and systems infrastructure, including payment delivery structures, State-specific policies, and the demographic composition of each State’s Medicaid population. Additionally, these costs are expected to evolve over time as States gain implementation experience, applicant and beneficiary compliance patterns emerge, and the broader effects of the community engagement requirement become better understood.

a. State and Federal Costs

States will need to make changes to their Medicaid eligibility systems to comply with the new community engagement requirement, and we expect that this will result in costs to the Federal government and States. Section 71119(e) of the WFTC legislation provides \$200 million for States to establish systems necessary to carry section 71119 and other sections of the WFTC legislation, title VII, subtitle B, chapter 1 related to conducting eligibility determinations or redeterminations, which is expected to be spent in 2026. We expect States may have additional costs to upgrade their Medicaid eligibility systems to comply with this section; however, there is limited information on how much States will invest in these systems. To estimate State costs, we reviewed State-submitted Advanced Planning Documents (APDs) from 21 States that contain information on expected spending on eligibility system changes related to community engagement. For these 21 States, we estimate that the average cost reported in the APD is \$12.2 million, ranging from \$1 million to \$47 million. Additionally, based on

discussions with the States on their estimated systems costs, we estimate the average cost is between \$9 million and \$21 million. Additionally, we estimate that a one-time cost for States to upgrade eligibility systems would be \$15 million per State, which results in a total estimate of \$660 million (\$15 million multiplied by 44 States). We expect these costs to occur in 2026. We also project that there will be annual

costs to maintain these systems, and we assume that those costs will be 10 percent of implementation costs (\$66 million annually). In our estimates, we assume that FFP is available at a 90 percent match rate for design, development, and implementation costs. States would be responsible for the remaining 10 percent, consistent with 42 CFR part 433, subpart C; for ongoing maintenance, the Federal government

would pay 75 percent of costs, and the States would pay 25 percent.¹⁴⁴

We project that total spending on systems upgrades will be \$1.52 billion from 2026 through 2036, with the Federal government paying \$1.289 billion and the States paying \$231 million. The estimated annual impacts are shown in Table 33.

TABLE 33: Projected Federal and State Medicaid Spending for the Adult Group Under New Requirement, FY 2026-2036 (Expenditures in Real 2026 dollars)

Fiscal Year	Total Expenditures (\$ millions)	Federal Expenditures (\$ millions)	State Expenditures (\$ millions)
2026	\$860*	\$794	\$66
2027	\$66	\$49.5	\$16.5
2028	\$66	\$49.5	\$16.5
2029	\$66	\$49.5	\$16.5
2030	\$66	\$49.5	\$16.5
2031	\$66	\$49.5	\$16.5
2032	\$66	\$49.5	\$16.5
2033	\$66	\$49.5	\$16.5
2034	\$66	\$49.5	\$16.5
2035	\$66	\$49.5	\$16.5
2036	\$66	\$49.5	\$16.5

*Note: The total expenditures in fiscal year 2026 includes the \$200 million section 71119(e) of the WFTC legislation provides for States to establish systems necessary to carry section 71119 and other sections of the WFTC legislation, title VII, subtitle B, chapter 1 related to conducting eligibility determinations or redeterminations.

We note that actual costs may differ from these estimates. Data are very limited and there is a wide range of expected costs across States. Additionally, roughly half of all States have not reported any community engagement system costs in their APDs. States may have additional costs beyond those already requested in the APDs. Moreover, we do not have data on how much States expect to spend beyond implementation. Thus, actual costs may be higher or lower than we estimated.

We also estimate the costs for State systems updates to comply with the new community engagement

requirement. We estimate that States' costs will be \$231 million from 2026 through 2036, as shown in Table 33. Additionally, this IFC outlines requirements for States (and, where applicable, their contractors, in compliance with statutory single State agency requirements and conflict-of-interest limitations) to collect, verify, maintain, and, in certain instances, report specified information to CMS on the community engagement requirement. Included in this list are requirements related to applicable individuals (§§ 435.551, 435.552), exceptions and specified exclusions

(§§ 435.553, 435.554, 435.555), assessing and verifying compliance and noncompliance procedures (§§ 435.556, 435.557, 435.558, 435.912), *ex parte* verification processes (§ 435.557), and outreach to beneficiaries (§ 435.561). The quantitative costs are reflected in section IV. of this IFC. For ease of reference, and for projection purposes, we include a summary of total costs for the Federal government and States in Table 34 and note that the FFP match rate varies by row. For additional details, see section IV. of this IFC.

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¹⁴⁴ 42 CFR part 433 Subpart C, <https://www.ecfr.gov/current/title-42/part-433/subpart-C>.

TABLE 34: Summary of Total Cost for the Federal Government and States Agencies Associated with Implementation of Community Engagement Requirement

Requirement	Total Cost (\$)	Federal Share (\$)	State Share (\$)
One-Time Burden for Monitoring Community Engagement (PI data)	797,350	598,012	199,338
One-Time Burden for Monitoring Community Engagement (EP data)	797,350	598,012	199,338
One-Time Burden for Monitoring Community Engagement (T-MSIS data)	2,913,680	2,185,260	728,420
Annual Reporting for Monitoring Community Engagement (PI data)	488,907	366,680	122,227
Annual Reporting for Monitoring Community Engagement (EP data)	488,907	366,680	122,227
Good Faith Effort Exemption Request and Workplan	26,125	13,063	13,063
Good Faith Quarterly Reporting	13,371	6,686	6,686
State Plan Compliance	176,563	88,282	88,282
Verification Plan	505,226	252,613	252,613
Verification Plan Updates	5,211	2,606	2,606
Beneficiary Application Updates (Single Streamlined Application)	479,931	359,948	119,983
Beneficiary Application Updates (Presumptive Eligibility Applications)	239,722	179,791	59,931
Initial State Requirements to Establish and Document Short-Term Hardship Exceptions	479,931	359,948	119,983
Initial State Requirements for Short-Term Hardship Exception Notices	458,367	343,775	114,592
Initial Mailing State Requirements for Short-Term Hardship Exception Notices: Total Labor Burden	19,716,600	9,858,300	9,858,300
Initial Mailing State Requirements for Short-Term Hardship Exception Notices: Total Non-Labor Burden	24,060,000	12,030,000	12,030,000
Annual State Maintenance Requirements for Short-Term Hardship Exception Notices	114,592	85,944	28,648
Ongoing State Requirements for Mailing Short-Term Hardship Exception Notices – Annual Updates: Total Labor Burden	14,787,450	7,393,725	7,393,725
Ongoing State Requirements for Mailing Short-Term Hardship Exception Notices – Annual Updates: Total Non-Labor Burden	18,045,000	9,022,500	9,022,500
Short-Term Hardship Exception Notifications for Emergencies or Disasters	40,128	20,064	20,064
Short-Term Hardship Exception Requests for Unemployment	370,560	185,280	185,280
Annual Mailing State Requirements for Expiration of a Short-Term Hardship Event Described in § 435.555(d)(2) and (3): Total	11,961,404	5,980,702	5,980,702

Labor Burden			
Annual Mailing State Requirements for Expiration of a Short-Term Hardship Event Described in § 435.555(d)(2) and (3): Total Non-Labor Burden	14,596,400	7,298,200	7,298,200
Initial State Requirements for Outreach and Noncompliance Notices	458,367	343,775	114,592
Initial Mailing State Requirements for Outreach and Noncompliance Notices: Total Labor Burden	13,801,620	6,900,810	6,900,810
Initial Mailing State Requirements for Outreach and Noncompliance Notices: Total Non-Labor Burden	16,842,000	8,421,000	8,421,000
Annual State Maintenance Requirements for Communication Notices	114,592	85,944	28,648
State Requirements for Outreach – Annual Updates: Total Labor Burden	10,351,215	5,175,608	5,175,608
State Requirements for Outreach – Annual Updates: Total Non-Labor Burden	12,631,500	6,315,750	6,315,750
Ongoing State Requirements for Outreach – Loss of a Beneficiary’s Status as a Specified Excluded Individual	1,984,804	992,402	992,402
Ongoing State Requirements for Outreach – Loss of a Beneficiary’s Status as a Specified Excluded Individual: Total Non-Labor Burden	2,422,040	1,211,020	1,211,020
TOTAL	170,168,913	87,042,380	83,126,538

BILLING CODE 4120–01–C**b. Costs to Medicaid Beneficiaries**

The reallocation of the time of Medicaid participants toward work also has an opportunity cost according to the value of the activities foregone while working, such as leisure time or work done in the home. Labor market participants are expected to supply labor up to the point where their marginal opportunity cost equals the benefit of work net of taxes (including income, payroll, sales and excise taxes) and forgone government assistance. For consistency with the benefit section of this economic analysis, we take the hourly benefit before subtracting taxes to be the MPL of \$24.84. For individuals potentially eligible for Medicaid, the foregone government assistance (including State and local assistance) can be substantial, and sometimes exceeds the MPL. Following the White House Council of Economic Advisers (2019), we estimate the gap between the MPL and the opportunity cost of time as 48 percent of the MPL.¹⁴⁵ That is, we

use an opportunity cost of time of \$12.92 per hour (= \$24.84 * (1 – 0.48)).

Some of the beneficiaries are expected to fulfill the community engagement requirement by community service, work program participation, or an educational program rather than paid work. This RIA estimates the hourly opportunity cost of these non-paid community engagement activities at the same \$12.92 as paid work.

Notably, the MPL exceeds the opportunity cost of work for the economy as a whole, even when they are equal from the worker’s perspective. This is known in labor economics, public economics, and macroeconomics as “the labor wedge” and is one of the most quantitatively significant features of labor markets.^{146 147}

2019, p. 423. <https://www.govinfo.gov/content/pkg/ERP-2019/pdf/ERP-2019.pdf>. See also <https://www.nber.org/papers/w18088>, as discussed in more detail near Table 46 in this regulatory preamble.

¹⁴⁶ Hall RE. (1997) “Macroeconomic Fluctuations and the Allocation of Time,” *Journal of Labor Economics* 15, no. 1, Part 2: S223–S250. <https://doi.org/10.1086/209862>.

¹⁴⁷ Hall RE. (2009). “Reconciling Cyclical Movements in the Marginal Value of Time and the Marginal Product of Labor,” *Journal of Political*

The increase in the nation’s labor supply due to this IFC may affect the wages and employment decisions of workers and employers that are not part of the Medicaid program. These market equilibrium effects are reasonably approximated as neither aggregate costs nor benefits and do not need to be assessed here.¹⁴⁸

As specified at § 435.552, an applicable individual demonstrates community engagement for a month if they work, complete community service, or participate in a work program for not less than 80 hours; enroll in an educational program at least half-time; or have monthly income, or average monthly income over the preceding 6 months as a seasonal worker, that is not less than the Federal minimum wage multiplied by 80 hours. Individuals can also demonstrate community engagement through a combination of qualifying activities. The combined time

Economy 117, no. 2: 281–323. <https://doi.org/10.1086/599022>.

¹⁴⁸ Induced changes in wages and employer profits are sometimes known as “pecuniary externalities,” which are transfers rather than an externality in the usual sense.

¹⁴⁵ White House Council of Economic Advisers. (March 2019) *Economic Report of the President*,

for all activities must be a total of not less than 80 hours per month. At § 435.553, we specify that States must deem any individual for a month as having demonstrated community engagement, if: (1) for all or part of a month, the individual was under the age of 19, entitled to or enrolled for Medicare benefits under Part A or enrolled for benefits under Part B, described in any of the mandatory eligibility groups in subclauses (I) through (VII) of section 1902(a)(10)(A)(i) of the Act, or a specified excluded individual; or (2) at any point during the 3 months prior to the month in question, the individual was an inmate of a public institution. Moreover, we specify that specified excluded individuals defined at § 435.554 are excluded from the definition of applicable individual; therefore, community engagement is not a condition of their eligibility. Additionally, section 1902(xx)(3)(A) of

the Act establishes mandatory exceptions from demonstrating community engagement via the pathways described in § 435.552(a) (see section II.C. of this IFC for more information regarding demonstrating compliance) for certain applicable individuals. States must deem an applicable individual compliant for a month if the individual meets the mandatory exception criteria (which are further described in this section of this IFC). New § 435.553 implements and interprets the mandatory exceptions in section 1902(xx)(3)(A) of the Act.

We anticipate some Medicaid beneficiaries and applicants will be required to provide additional information or documentation to verify that they demonstrated community engagement, should be deemed as having demonstrated community engagement through an exception, or be excluded from the community engagement requirement as a specified

excluded individual. Applicants and beneficiaries may have to submit documentation if the State cannot verify compliance or deem compliance with the community engagement requirement or an individual's specified excluded status based on data sources or other available information to the State. Applicable beneficiaries may also need to document, track, and submit information to a State about their short-term hardship exception related to receipt of institutional or inpatient services or other services of similar acuity or when they or a dependent must travel outside of their community to receive certain medical services.

These quantified costs align with and are reflected in section IV. of this IFC. For ease of reference, and for projection purposes, we include a summary of total costs for new Medicaid applicants and Medicaid beneficiaries in Table 35.

TABLE 35: Summary of Total Burden for New Applicants and Medicaid Beneficiaries Associated with Implementation of Community Engagement Requirement

Requirement	New Applicant and Beneficiary Burden (\$)	Federal Share (\$)	State Share (\$)
Beneficiary Burden for Community Engagement Data Submission	454,784,000	N/A	N/A
Summary of New Applicant Burden for Community Engagement Information Submission	96,900,000	N/A	N/A
Beneficiary Burden for Short-Term Hardship Exception Requests for Institution/ Inpatient Stays or Travel	3,876,000	N/A	N/A
TOTAL	555,560,000	N/A	N/A

3. Transfers

a. Impacts on Medicaid Enrollment and Benefit Expenditures

This IFC implements the statutory definition of applicable individuals at §§ 435.119 and 435.551 to describe Medicaid applicants and beneficiaries who must demonstrate community engagement as a condition of their Medicaid eligibility. With certain exclusions specified at § 435.554, applicable individuals include those who are eligible for, or enrolled under, the State plan adult group described in section 1902(a)(10)(A)(i)(VIII) of the Act and § 435.119, and individuals eligible for or enrolled in coverage under section

1115(a)(2) expenditure authority providing MEC who meet the other criteria in statute.

This IFC specifies the steps States must take to assess and verify compliance, established at §§ 435.556 and 435.557, with the community engagement requirement at application and renewal; renewals for most beneficiaries who are subject to the community engagement requirement occur once every 6 months. At § 435.556, the IFC describes the statutory requirement that, as a condition of eligibility at renewal, States must require applicable individuals to demonstrate or be deemed to demonstrate community engagement for

at least 1 month since the individual's most recent eligibility determination or redetermination, though States may elect to conduct more frequent verifications and/or require more than 1 month of compliance or deemed compliance.

To assess the impact of the new community engagement requirement on Medicaid enrollment and benefit expenditures, we estimate these impacts based on the President's Fiscal Year 2027 Budget (PB 2027) Medicaid enrollment and expenditure projections, with FY 2023 as the base year for actual observed data and exclude the impact of any Medicaid provisions of the WFTC legislation. Several provisions of the

WFTC legislation are expected to have effects on Medicaid enrollment and expenditures. We have excluded those other effects from this analysis to present clearly the anticipated impacts of the community engagement

requirement on Medicaid. Projected national total Medicaid enrollment and expenditures for the adult group, which includes both newly eligible and not-newly eligible subgroups, are as follows in Table 36. We project enrollment will

increase at an average rate of 0.7 percent per year and expenditures will increase at an average rate of 6.6 percent per year.

TABLE 36: Projected Medicaid Spending for the Adult Group in the Hypothetical Absence of the WFTC Legislation, FY 2027-2036 (Expenditures in Real 2027 dollars)^{1,2}

Fiscal Year	Enrollment (millions)	Total Expenditures (\$ billions)	Federal Expenditures (\$ billions)
2027	20.4	\$232.0	\$208.0
2028	20.5	\$237.8	\$213.1
2029	20.7	\$243.7	\$218.3
2030	20.8	\$250.0	\$223.9
2031	20.9	\$256.7	\$229.8
2032	21.1	\$263.7	\$235.9
2033	21.2	\$270.8	\$242.2
2034	21.4	\$278.1	\$248.6
2035	21.5	\$285.7	\$255.3
2036	21.7	\$293.4	\$262.1

¹ Includes newly eligible adults, non-newly eligible adults in the adult group, and adults enrolled in section 1115 demonstrations covering individuals who would otherwise be in the adult group and subject to the community engagement requirement.

² Expenditures are expressed in real FY 2027 dollars, deflated using the 3.90 percent medical consumer price index (CPI) assumption from PB 2027.

The community engagement requirement established by section 71119 of the WFTC legislation has not previously been implemented as a condition of receiving coverage under the Medicaid State plan. Prior to this IFC, States could only impose such requirements through section 1115 demonstrations. The limited section 1115 demonstration experience that exists involved different implementation patterns, including reinstatements following terminations of eligibility and self-selected enrollment populations, that are not directly applicable to estimating the impact of mandatory requirements applied to an existing State plan enrollment. We have not relied on these previous demonstrations for data or assumptions used in this analysis. Accordingly, there is no direct historical experience from which to derive empirical estimates of how many enrollees will not meet the requirement, the community engagement implementation policies States will adopt, or how verification systems will perform in practice.

The primary data challenge in developing these estimates is that the characteristics most relevant to this analysis—work status, educational enrollment, disability status, caretaker responsibilities, and incarceration history—are not currently captured in Medicaid administrative data. As a result, we relied on a combination of external survey data, Medicaid administrative data, and published research to develop the key assumptions underlying these estimates. Each of these sources has limitations that are discussed further in the limitations and caveats section below.

A second source of uncertainty is that the estimates depend heavily on State implementation choices that are not yet known. For example, the statute establishes minimum requirements for compliance checks at application and renewal, with at least 1 month of demonstrated compliance between redeterminations, but it gives States discretion to require more frequent verifications and more months for beneficiaries to demonstrate compliance. These choices will affect

both the noncompliance and procedural disenrollment rates. Similarly, States have discretion over whether to adopt the option to consider short-term hardship events, described at § 435.555, and the extent of adoption will affect the share of enrollees subject to the requirement at a given time. We model a range of scenarios to reflect this uncertainty, but the actual distribution of State choices is unknown.

Finally, the estimates in this section do not capture potential behavioral responses, such as increased workforce participation or educational enrollment in response to the requirements, or the extent to which individuals who lose Medicaid coverage may obtain alternative coverage. Both factors could partially offset the projected coverage losses, but neither is quantifiable with available data.

Enrollment and per-enrollee expenditure projections are drawn from PB 2027, as described previously. Total computable and Federal per-enrollee expenditures are trended separately. Federal per-enrollee figures reflect current law FMAP rates throughout the

projection period. For purposes of the underlying cost model, the adult group is separated into newly eligible and non-newly eligible subgroups. The FMAP differs for these subgroups; projecting expenditures separately allows the projections to apply the appropriate average FMAP to each subgroup. The distinction between newly eligible and non-newly eligible adult group drives the Federal and State cost split. All other assumptions in the analysis are identical for newly eligible and non-newly eligible adult group.

We do not assume any change to the average per-enrollee costs for the remaining enrolled population relative to current projections. There are some reasons per-enrollee costs for the remaining population may be lower than for those that lose coverage. Individuals meeting the community engagement requirement may be healthier on average than those that lose coverage, as individuals not working or active in community engagement may have poorer health, making it harder to participate. In addition, younger individuals are more likely to meet the requirement based on already established activities, such as being enrolled in a full-time education program. If a higher proportion of younger individuals meet the community engagement requirement and, as a result, remain enrolled than the proportion of older individuals that maintain coverage, that may contribute to lower average costs per enrollee. However, there are also some reasons that the costs of those remaining could be higher. Most notably, individuals experiencing a short-term medical hardship (including inpatient hospital or nursing facility care) and those determined medically frail likely have substantially higher health care costs than others in this eligibility group, and they would remain covered in Medicaid under this new requirement. Given the factors that could lead to lower or higher per-enrollee costs, and the uncertainty of their relative magnitude, we made no adjustment to the average per enrollee cost for those losing coverage or retaining coverage under section 71119 of the WFTC legislation.

To develop this analysis, we started by determining how many enrollees may be subject to the community engagement requirement under this rule. We started with the projection of

the number of enrollees who would be: (1) a newly eligible adult made eligible under 1902(a)(10)(A)(i)(VIII); (2) a non-newly eligible adult otherwise not eligible under 1902(a)(10)(A)(i)(I) through (VII); and (3) an adult eligible under a section 1115 demonstration who would otherwise be eligible under 1902(a)(10)(A)(VIII). Those projections are shown in Table 34.

Several groups of enrollees would have mandatory exceptions from the community engagement requirement, which include individuals under age 19, individuals also entitled to or enrolled in Medicare Part A and/or Part B, and those described in another mandatory categorically needy eligibility group in sections 1902(a)(10)(A)(i)(I) through (VII). Those individuals are not included in our analysis.

For the purposes of these estimates, we estimated how many people would be excluded from or meet the community engagement requirement in two steps. In the first step, we developed assumptions for the percentage of individuals that would not be subject to the community engagement requirement because they qualify for certain specified exclusions. In the second step, we made assumptions for the percentage of remaining individuals who would meet the community engagement requirement. This group would also include individuals who would be eligible for other specific exclusions, including those currently enrolled in TANF and/or SNAP and meeting the work requirements for those programs. Generally, we assumed that if an individual would meet the Medicaid community engagement requirement (for example, by meeting the employment or education requirements described in this IFC), then they were also likely to meet those requirements for TANF and/or SNAP (if they were enrolled in those programs). Therefore, we did not separately estimate how many individuals would qualify as specified excluded individuals on the basis of meeting or not being exempt from the work requirements of other programs.

There are also several categories under which an individual may qualify as a specified excluded individual and as such would not be subject to the community engagement requirement. As described in the preceding paragraph, in

the first step we developed assumptions about how many people would qualify as a specified excluded individual under a subset of the exclusions in the statute. This subset includes: American Indians and Alaska Natives; pregnant women or individuals entitled to postpartum medical assistance; a parent, guardian, caretaker relative, or family caregiver of a dependent child 13 years of age and under or a disabled individual; inmates of a public institution; and individuals who are medically frail or otherwise have special medical needs. Individuals who have been an inmate at any point in the previous 3 months are mandatorily excepted from the community engagement requirement and are deemed to have demonstrated community engagement in each of the 3 months following their release. We have combined the impact of the mandatory exception and the specific exclusion for current inmates together in this analysis. We estimate that about 24 percent of applicable individuals would be specifically excluded under one or more of these categories and therefore not subject to the community engagement requirement. This estimate is derived by applying these exclusions and reflects the combined effect of removing American Indian and Alaska Native specified excluded individuals (2.5 percent) and applying the other 4 listed exclusion categories additively (21.7 percent combined). (There may be some overlap between these categories—for example, someone could be both pregnant and a parent of a child under age 13. Calculating the impact of these exclusions multiplicatively instead of additively to account for potential overlap could lead to a lower percentage of those estimated to receive specific exclusions; however, we believe the differences would be small (less than 1 percent) and that the 21.7 percent assumption is a reasonable estimate of the percentage of individuals who would be specifically excluded under one of these criteria.)

The combined impact of these 5 specific exclusions is 24 percent; that is, we estimate 24 percent of applicable individuals would meet one or more of these 5 specific exclusions. The assumptions for each specific exclusion and sources for those assumptions are shown in the following Table 37.

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TABLE 37: Specified Excluded Individuals and Mandatory Exceptions

Category	Rate	Source
American Indian or Alaska Native specified excluded individuals	2.5%	KFF analysis of American Community Survey data. ¹
Pregnant or postpartum	1.7%	KFF analysis of Centers for Disease Control and Prevention, National Center for Health Statistics ² ; newly eligible share derived from CMCS 50139 MIH Tool 1 Code Sets, T-MSIS FFS and encounter data. Applied an enrollment factor of 1.5 to reflect 6 months of prenatal and 12 months of postpartum coverage per birth event. Rate assumed stable as a percentage of the adult group population.
Caretaker relative of a dependent child age 13 or under, or of a disabled individual	8.5%	CMS-64 data (October CY 2024): 11.5% of newly eligible enrollees are parent/caretaker relatives. Applied 73.7% to reflect the share caring for a child age 13 or under, based on a simplifying assumption of uniform age distribution across ages 0–18. Family caregivers as defined in the RAISE Family Caregivers Act assumed captured within this estimate.
Inmate of a public institution currently or at any point during the 3 months prior to the month in question (including those who receive a mandatory exception)	1.5%	MACPAC, <i>Report to Congress on Medicaid and CHIP</i> , June 2023, Figure 3-1: Applied a 28% Medicaid enrollment rate among incarcerated adults and assumed 50% are newly eligible, yielding approximately 1.5% of the FY 2026 newly eligible population. Snapshot data representing a single representative day. Note: the statutory mandatory exception covers the 3 month review period; this estimate may modestly understate the true rate, as it does not capture individuals recently released from incarceration.
Medically frail or has other special medical needs	10.0%	KFF analysis of work status among Medicaid adults. ³ Covers individuals who are blind or disabled as defined under section 1614 of the Act; individuals with an SUD; individuals with a disabling mental disorder; individuals with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more ADL; and individuals with a serious or complex medical condition.

¹ KFF, “Medicaid Coverage Rates for People Ages 0–64 by Race/Ethnicity.” <https://www.kff.org/medicaid/state-indicator/people-0-64-medicaid-rate-by-raceethnicity/>.

² KFF, “Births Financed by Medicaid by Metropolitan Status.” <https://www.kff.org/medicaid/state-indicator/births-financed-by-medicaid/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

³ KFF, “Understanding the Intersection of Medicaid and Work: An Update.” <https://www.kff.org/medicaid/understanding-the-intersection-of-medicaid-and-work-an-update/>.

We also estimated the effect of short-term hardship exceptions, which we estimate would be equal to 3.45 percent of applicable individuals. States electing

the optional exception must adopt all qualifying circumstances listed as short-term hardship events. We assume that 75 percent of States will adopt the

optional exception for short-term hardship events. The assumptions for the short-term hardship exceptions are described in Table 38.

TABLE 38: Short-Term Hardship Exceptions

Exception Category	Rate	Source
Individual or Dependent Traveling outside the community for medical services	0.0%	Assumed de minimis
Receiving inpatient hospital, nursing facility, intermediate care facility, inpatient psychiatric, or services of similar acuity during the month	0.4%	Estimated from utilization data
Residing in a county with an unemployment rate at or above the lesser of 8% or 1.5 times the national rate	0.8%	BLS Local Area Unemployment Statistics (LAUS), county-level data (2024)
Residing in a locale subject to a presidentially declared emergency or disaster	3.4%	41% of U.S. population impacted by a federally declared emergency or disaster at some point during 2024 ÷ 12 months $\approx$ 3.4% in any given month

Combining the impacts of the subgroup of specified exclusions and the short-term exceptions, we estimate that 26 percent of applicable individuals would either have a specific exclusion (as listed in Table 37) or a short-term hardship exception (as listed in Table 38), and the other 74 percent of applicable individuals would either need to demonstrate compliance or be deemed to demonstrate compliance (via a mandatory exception) with the community engagement requirement or receive one of the other specified exclusions.

States are required to implement the community engagement requirement on

or before January 1, 2027. States may elect to implement early, and the statute provides for delayed implementation for States demonstrating good-faith compliance efforts. We assume that the majority of States will implement the requirements effective January 1, 2027. Nebraska began implementing the community engagement requirement on May 1, 2026, and other States may also start later in 2026.

Because enrollment impacts depend heavily on State implementation choices that are not yet known, we modeled four scenarios representing a range of possible State policies. The scenarios vary by verification frequency

(semi-annual or quarterly) and the number of months within each review period during which an applicable individual must demonstrate compliance.

We assigned scenario weights based on our actuarial judgment about the distribution of likely State implementation approaches, with 50 percent of enrollees assumed to be in States adopting the minimum statutory requirement of semi-annual verification with 1 month of compliance required between verifications, and the remaining 50 percent in States adopting more frequent verifications and/or longer compliance periods.

TABLE 39: Scenario Assumptions and Weights

Description	Scenario 1	Scenario 2	Scenario 3	Scenario 4
	Lowest impact on enrollment	Highest impact on enrollment	Middle impact on enrollment	Middle impact on enrollment
Verifications per year	2	4	2	4
Months must meet requirement between verifications	1 of 6	3 of 3	3 of 6	1 of 3
Portion meeting community engagement requirement via full time or part-time work	81%	75%	78%	78%
Portion meeting community engagement requirement via enrollment in educational program at least half-time	9%	7%	8%	8%
Portion not meeting community engagement requirement	10%	19%	14%	14%
Net procedural disenrollment rate	5%	10%	5%	10%
Weight applied to scenario	50%	10%	20%	20%

From these scenarios, we derive two distinct disenrollment rates. First, we estimate that 12 percent of applicable individuals subject to the requirement will not meet them and lose coverage. This estimate reflects a scenario-weighted average. Scenario-specific noncompliance rates are derived from KFF work status data for Medicaid adults,¹⁴⁹ reflecting the share of enrollees who are not working, not in school, and do not otherwise meet the community engagement threshold under each scenario’s compliance rules. We assume that all individuals who report working full time would meet the community engagement requirement in each of the four scenarios. The portion of individuals that report working or attending school part-time who are assumed to meet the community engagement requirement varies from 100 percent to 75 percent depending on the scenario. This is because part-time work or school attendance may be subject to seasonal variation or other variations in either the number of work (or school) hours that are offered or that the individual is able to work (or attend school), and these variations may mean that the individual is not able to meet the community engagement requirement in every month of the year. Individuals who report not working for reasons other than caretaking, illness, or disability are assumed not to meet the community engagement requirement in any scenario. Taken together, these assumptions result in 81 percent of enrollees meeting the community engagement requirement in the lowest impact scenario and 75 percent of enrollees meeting the community engagement requirement in the highest impact scenario.

In addition, we estimate that 7 percent of applicable individuals who may be working, enrolled in school, or

otherwise performing activities in line with community engagement requirement, or qualify for a mandatory exception or short-term hardship exception that deems them as demonstrating community engagement, would lose coverage due to administrative or procedural reasons (or in the case of a new applicant, may have their application denied and thus not enroll). These potential reasons for loss of coverage include, for example, not responding to verification requests or submitting insufficient documentation. The reasons individuals may not respond or submit insufficient documentation are manifold. This could include scenarios in which the required documentation was not received by the individual in a timely manner due to mail delivery delays or the individual had difficulty understanding or completing the required paperwork. Those fraudulently or improperly enrolled in the program or attempting to enroll in the program are unlikely to furnish documentation or respond to verification requests. Additionally, individuals with access to employer coverage or other forms of coverage may not complete documentation or respond to verification requests. Coverage losses may also be attributable, in part, to procedural processing errors at the State level. The gross procedural disenrollment rate is a scenario-weighted average anchored to post-unwinding (of the continuous enrollment condition related to the COVID–19 Public Health Emergency) Medicaid renewal data, which shows an average procedural disenrollment rate of about 12 percent for annual redeterminations over the most recent 12 months.¹⁵⁰ The procedural disenrollment rate may include non-responses by individuals who no longer meet requirements to qualify for

Medicaid, documentation errors or non-responses by individuals who do meet requirements to qualify for Medicaid, or other factors. We assume that about half of those with procedural disenrollments (about 5.5 percent) are due to documentation errors or non-responses by individuals who do meet program requirements, a population which is more closely related to applicable individuals who either demonstrate community engagement or are deemed to demonstrate community engagement via an exception. Where redeterminations take place more than once a year, we assume that this procedural disenrollment rate applies at each redetermination, resulting in a 12 percent procedural disenrollment rate for scenarios with semi-annual renewals and a 20 percent rate for scenarios with quarterly verifications. The gross rate is then reduced by 50 percent to exclude baseline renewal attrition that would occur regardless of the community engagement requirement. The reduction accounts for the share of procedural disenrollments that would occur at routine renewal regardless of the community engagement requirement, which should not be attributed to this policy.

The 12 percent noncompliance rate is applied to the 74 percent of adult group enrollees estimated to be applicable individuals who are not receiving a specific exclusion nor excepted under a short-term hardship. The 7 percent net procedural disenrollment rate is applied to both the applicable individuals deemed compliant due to a mandatory exception or short-term hardship exception and to the applicable individuals subject to and meeting the requirements. Together, they yield a combined estimated disenrollment rate of approximately 15 percent of total adult group enrollment.

TABLE 40: Derivation of Combined Disenrollment Rate

Component	Rate	Applied To	Share of Total Enrollment
Noncompliance disenrollment	12%	74% of applicable adults (those not receiving a specific exclusion or excepted due to a short-term hardship)	8.9%
Procedural disenrollment	7%	91% (total enrollment minus noncompliant)	6.4%
Combined disenrollment rate			15%

¹⁴⁹ Tolbert J., Cervantes S., Rudowitz R., Burns A. (2025). “Understanding the Intersection of Medicaid and Work: An Update,” KFF. <https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work-an-update/>.

¹⁵⁰ “January 2026: Medicaid and CHIP Eligibility Operations and Enrollment Snapshot.” (April 24, 2025). <https://www.medicaid.gov/resources-for-states/downloads/eligib-oper-and-enrol-snap-jan2026.pdf>.

These rates are applied as full annual rates beginning in FY 2027, the first year of implementation. Because we assume implementation is effective January 1, 2027, the impacts in FY 2027 reflect 75 percent of the full-year impact.

The estimated enrollment impact is the estimated number of enrollees (1) who would be subject to the community engagement requirement and not meet the requirement, or (2) would meet the

requirement or qualify for an exception, and would not successfully demonstrate their compliance or exception, developed based on the assumptions described above. The estimated impact on expenditures is the enrollment impact multiplied by the average per-enrollee expenditures.

We project that enrollment would be reduced by 2.3 million individuals in FY 2027 (accounting for implementation

occurring in the second quarter of the fiscal year) and by between 3.1 to 3.3 million individuals in subsequent years. We project Federal Medicaid spending would be reduced by \$350.3 billion over the next 10 years and State Medicaid spending would be reduced by \$41.6 billion over the same time period. The impacts are shown in Table 41.

TABLE 41: Estimated Impacts of Community Engagement Requirement on Medicaid Enrollment and Expenditures¹

Fiscal Year	Enrollment Reduction (millions)	Federal Expenditure Change (\$ millions)	State Expenditure Change (\$ millions)	Total Expenditure Change (\$ millions)
2027 ²	–2.3	–\$23,900	–\$2,800	–\$26,700
2028	–3.1	–\$32,600	–\$3,900	–\$36,500
2029	–3.2	–\$33,400	–\$4,000	–\$37,400
2030	–3.2	–\$34,300	–\$4,000	–\$38,300
2031	–3.2	–\$35,300	–\$4,100	–\$39,400
2032	–3.2	–\$36,200	–\$4,300	–\$40,500
2033	–3.3	–\$37,100	–\$4,500	–\$41,600
2034	–3.3	–\$38,100	–\$4,600	–\$42,700
2035	–3.3	–\$39,200	–\$4,600	–\$43,800
2036	–3.3	–\$40,200	–\$4,800	–\$45,000
10-Year Total		–\$350,300	–\$41,600	–\$391,900

¹ Expenditure impacts are expressed in real FY 2027 dollars, deflated using the 3.90 percent medical CPI assumption from PB 2027.

² FY 2027 figures reflect 75 percent of the full-year impact, as implementation is assumed to be effective January 1, 2027 (the second quarter of FY 2027).

These estimates are subject to uncertainty. The disenrollment estimates reflect a weighted average of four implementation scenarios, and the actual distribution of State choices regarding verification frequency, compliance period length, adoption of short-term hardship exceptions, and implementation timing is unknown and could produce outcomes materially different from the central estimate. Additionally, assumptions are based on annual or average annual data; the timing of an enrollee's work or school hours relative to the timing of their redetermination may cause individual-level variation not captured in the aggregate estimates. The estimate for the incarceration mandatory exception is based on November 2025 Eligibility Operations and Enrollment Snapshot

data¹⁵¹ and does not capture individuals recently released from incarceration who remain covered by the 3-month review provision.

This analysis does none of the following: (1) estimate the extent to which individuals who lose Medicaid coverage may obtain alternative coverage, and (2) model interactions with other provisions of Public Law 119–21. We assume both of these factors could partially offset or modify the projected coverage losses. Per-enrollee cost projections extend 10 years into the future and are subject to uncertainty

¹⁵¹ “November 2025: Medicaid and CHIP Eligibility Operations and Enrollment Snapshot.” (February 27, 2026). <https://www.medicaid.gov/resources-for-states/downloads/eligib-oper-and-enrol-snap-nov2025.pdf>.

inherent in long-range medical cost forecasting.

4. Aggregate Time Allocation and Additional Effects on the Federal Deficit

The estimates in this section do not introduce an independent forecast of induced work; they monetize the time-allocation implications of the scenario assumptions in Table 39. As noted, at least 50 percent of able-bodied adults enrolled in Medicaid did not work. If, say, 80 percent are to work when the IFC is in effect (see Table 39), then at least 30 percent of those who would participate absent the IFC must have their time allocation affected by the IFC. An applicable individual demonstrates community engagement through employment by either working not less than 80 hours or the income alternative

of having a monthly income not less than \$580 (applicable Federal minimum wage multiplied by 80). Table 42 shows this bound separately for the four scenarios introduced in Table 39.

TABLE 42: Employment Effects by Scenario

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Description	Lowest impact	Highest impact	Middle	Middle
Verifications per year	2	4	2	4
Months must meet requirement between verifications	1 of 6	3 of 3	3 of 6	1 of 3
Moved to work by the IFC, lower bound	31%	25%	28%	28%
Moved to other community engagement by the IFC, estimated as half those in other community engagement.	4.5%	3.5%	4%	4%
Weight applied to scenario	50%	10%	20%	20%

Table 43 shows the annual hours added to the labor market for each scenario, assuming baseline adult group enrollment of 20.4 million, 75 percent of which are subject to the community engagement requirement. The high-impact scenario (scenario 2 requires \$580 dollars of earnings, which would be about 27 hours per month for a worker with hourly wage at the 25th percentile. CMS expects, in that scenario, 3.8 million to meet such a requirement who would not have

worked. Another 0.6 million would be in unpaid community engagement, for a total of 4.4 million moving to engagement, as shown in the table. As shown in the low-impact scenario, a weaker requirement of just 1 of the past 6 months is expected to be met by an additional 1.0 million beneficiaries. The table's first aggregate hours row shows what the added hours would be if all 5.4 million met the requirement only at the minimum. The next "additional months" row assumes that the 4.4

million in scenario 2, who would meet the "maximum" requirement (all months at \$580 income), instead would work at a level halfway between the minimum and maximum while they are enrolled in Medicaid. An accurate forecast requires an "additional months row" because working in 1 month involves the acquisition of knowledge, relationships, and other experiences that increase the net benefit to work in adjacent months.

TABLE 43: Annual Hours Added to the Labor Market by Scenario

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Description	Lowest impact	Highest impact	Middle	Middle
Verifications per year	2	4	2	4
Months must meet requirement between verifications	1 of 6	3 of 3	3 of 6	1 of 3
Number of beneficiaries moved to engagement by IFC (point in time, in millions)	5.4	4.4	4.9	4.9
Annual engagement hours due to the IFC, lower bound (millions of hours per year)				
Meeting requirement at the minimum	869	4,187	2,350	1,567
Meeting the requirement by engaging additional months	1,744	0	1,047	1,395
Weight applied to scenario	50%	10%	20%	20%
Expected annual hours added to engagement, among beneficiaries (millions)	2,997			

Note that Table 43 otherwise has a tendency toward underestimation in that it (a) it ignores those who work due to exiting the Medicaid program, (b) it assumes that all those exempt or noncompliant are neither working under the IFC nor in the baseline, and (c) that workers meet the requirement by earning \$580 for the month rather than

working 80 hours.¹⁵² Additional underestimation of Table 43's cost entries (thus generating a tendency

¹⁵² Regarding possible effects of Medicaid participation on work, see Garthwaite C., Gross T., and Notowidigdo M.J. "Public Health Insurance, Labor Supply, and Employment Lock," *Quarterly Journal of Economics* 129, no. 2 (2014): 653–696. <https://doi.org/10.1093/qje/qju005>.

toward overestimation of net benefits) is possible if \$12.92 were a lower bound on affected individuals' opportunity cost of time.

Tables 44 and 45 show the costs and benefits associated with the IFC's change in time allocation using annual discount rates of 7 percent and 3 percent, respectively. The dollar

amounts in the top part of the tables are annualized. For beneficiary engagement, aggregate dollar amounts are obtained by multiplying the aggregate annual

hours of Medicaid beneficiaries from Table 43, including the bare-minimum hours as well as the additional hours, by

the hourly MPL of \$24.84 or the opportunity cost of \$12.92.

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TABLE 44: Costs and Benefits of IFC's Time Reallocation (7 Percent Discount Rate)

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Description	Lowest impact	Highest impact	Middle	Middle
Verifications per year	2	4	2	4
Months must meet requirement between verifications	1 of 6	3 of 3	3 of 6	1 of 3
BENEFITS				
Aggregate value of beneficiary engagement, \$ billions/year	22.5	36.0	29.2	25.5
Aggregate value of ex-beneficiary engagement, \$ billions/year	10.0	16.0	13.0	11.3
COSTS				
Opportunity cost of beneficiary engagement, \$ billions/year	11.7	18.7	15.2	13.2
Opportunity cost of ex-beneficiary engagement, \$ billions/year	5.2	8.3	6.7	5.9
Total annual net benefit, \$ billions	15.6	25.0	20.2	17.7
Weight applied to scenario	50%	10%	20%	20%
Expected net benefit, \$ billions, 2027-2036				
Annualized @ 7%/year	17.9			
NPV @ 7%/year	134.2			

TABLE 45: Costs and Benefits of IFC's Time Reallocation (3 Percent Discount Rate)

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Description	Lowest impact	Highest impact	Middle	Middle
Verifications per year	2	4	2	4
Months must meet requirement between verifications	1 of 6	3 of 3	3 of 6	1 of 3
BENEFITS				
Aggregate value of beneficiary engagement, \$ billions/year	22.5	36.0	29.2	25.5
Aggregate value of ex-beneficiary engagement, \$ billions/year	10.4	16.6	13.5	11.7
COSTS				
Opportunity cost of beneficiary engagement, \$ billions/year	11.7	18.7	15.2	13.2
Opportunity cost of ex-beneficiary engagement, \$ billions/year	5.4	8.6	7.0	6.1
Total annual net benefit, \$ billions	15.8	25.2	20.5	17.9
Weight applied to scenario	50%	10%	20%	20%
Expected net benefit, \$ billions, 2027-2036				
Annualized @ 3%/year	18.1			
NPV @ 3%/year	158.8			

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A substantial fraction of adults on Medicaid during 1 calendar year would no longer be enrolled in Medicaid the following year. Individuals who move to work and satisfy the community engagement requirement while participating in Medicaid acquire knowledge, relationships, habits, and health increase the net benefit to work even after they leave Medicaid. In other words, working encourages human capital investment, which itself feeds back to encourage additional work hours. The human capital perspective suggests that some fraction of beneficiaries would continue to work in months after the requirement ended. Based on (a) Card and Hyslop's (2005) finding that the additional earnings resulting from participation in a welfare demonstration project persisted over time but decayed at 3 percent per month after exit from the program, (b) an able-bodied engagement-compliant adult Medicaid annual exit rate of 43 percent, and (c) a 29 percent annual reentry rate of former beneficiaries, we estimate the effect of the community engagement requirement on engagement after Medicaid exit.^{153 154 155} Because these

¹⁵³ Card D. and Hyslop D.R. (2005). "Estimating the Effects of a Time-Limited Earnings Subsidy for Welfare-Leavers." *Econometrica* 73, no. 6: 1723–1770. <https://doi.org/10.1111/j.1468-0262.2005.00637.x>.

¹⁵⁴ Sommers B.D. (2009). "Loss of Health Insurance Among Non-Elderly Adults in Medicaid." *Journal of General Internal Medicine* 24, no.1: 1–7. <https://doi.org/10.1007/s11606-008-0792-9> estimates a 43 percent annual exit rate.

¹⁵⁵ A 29 percent reentry rate is required for the steady-state number of ex-beneficiaries to outnumber current beneficiaries by a factor of 1.5-

are effects in the future, the corresponding "ex-beneficiary" benefit and cost rows in Tables 44 and 45 depend on the assumed discount rate for future benefits and costs. The ex-beneficiary rows are about 45 percent of, and in addition to, the current beneficiary rows.

The total annual expected net benefit (averaging across scenarios) from the time reallocation effects of the IFC is about \$52 billion. The final entry in each table is the net present value (NPV) of time allocation benefits minus time allocation costs, calculated as an expectation by weighting each scenario value according to the scenario weight. The NPV is \$459 billion at a 3 percent annual discount rate and \$388 billion at a 7 percent rate.

An important reason for the labor wedge-adjacent societal welfare gain—the gap between the aggregate benefit of an hour of market work and the

to-1. Other studies have demonstrated that interventions designed to increase employment and earnings among populations eligible for or receiving welfare benefits can persist over time. For example, a large-scale randomized control study of the Subsidized and Transitional Employment Demonstration, launched by HHS in 2010, found that earnings improved more than three years after enrollment, with earnings increases for three of the seven interventions maintained for six years after enrollment. HHS's Health Profession Opportunity Grants Program (HPOG)—the original 1.0 study launched in 2010, and the 2.0 study launched in 2015—found persistent increases in employment in the health care profession, though the interventions did not identify earnings increases. In particular, HPOG 1.0 found employment gains in health care by 5 percentage points six years after enrollment. The Pathways for Advancing Careers and Education project studied a number of interventions and found that one resulted in large earnings (around \$1,900) gains after six years.

worker's opportunity cost at the margin—is that work (and the spending it enables) generates revenue for government treasuries in the form of taxes on income, payroll, sales, and excise.¹⁵⁶ (Work also tends to move workers off safety net programs, or at least phase out some of their benefits. Either way, the work reduces deficits.)

Table 46 uses the most recent marginal tax rate calculations posted at the National Bureau of Economic Research website in *The Redistribution Recession* that focuses on measuring the labor wedge and its fiscal components.¹⁵⁷ The components include Federal revenue items, such as payroll taxes, State tax items, as well as Federal and State safety-net spending items. The Federal savings as additional work results in Medicaid exits is excluded from Table 46 in order to avoid double-counting savings calculated in previous tables. The Table's marginal tax rate (MTR) column is the part of the 48.0 percent labor wedge that reflects the contributions to the indicated segment of society to which the benefits accrue.¹⁵⁸

¹⁵⁶ Harberger, A.C. 1971. "Three Basic Postulates for Applied Welfare Economics: An Interpretive Essay." *Journal of Economic Literature*, 9(3), 785–797.

¹⁵⁷ Mulligan C.B. (2012). "Do Welfare Policies Matter for Labor Market Aggregates? Quantifying Safety Net Work Incentives since 2007," *National Bureau of Economic Research*. <https://www.nber.org/papers/w18088>. Data available at <https://data.nber.org/data-appendix/w18088/StatutoryIndices.nber.xlsx>.

¹⁵⁸ The MTR column adds to less than 48.0 percent because the 48.0 includes private sector markups and Medicaid.

TABLE 46: Distribution (Segment of Society Where Benefits Accrue) Resulting from the IFC's Time Reallocation¹

¹ Each table entry is the product of MTR and corresponding benefit in Table C44 (7 percent) or Table C45 (3 percent), excluding volunteer time (estimated as half of the non-work component of community engagement).

To:	Discount rate		Scenario 1	Scenario 2	Scenario 3	Scenario 4	Weighted average
		MTR	Lowest	Highest	Middle	Middle	
Federal revenue	7%	16.5%	5.0	8.0	6.5	5.7	5.7
	3%	16.5%	5.1	8.1	6.6	5.7	5.8
Federal non-Medicaid spending	7%	7.2%	-2.2	-3.5	-2.8	-2.5	-2.5
	3%	7.2%	-2.2	-3.6	-2.9	-2.5	-2.5
State revenue	7%	4.1%	1.2	2.0	1.6	1.4	1.4
	3%	4.1%	1.2	2.0	1.6	1.4	1.4
State non-Medicaid spending	7%	7.2%	-2.2	-3.5	-2.8	-2.5	-2.5
	3%	7.2%	-2.2	-3.6	-2.9	-2.5	-2.5

After the MTR column, each entry in Table 46 is in billions of dollars. Each is calculated in two steps. First, we refer to the scenario-specific time allocation aggregate benefits from Table 44 (7 percent discount rate) or Table 45 (3 percent discount rate) but eliminate unpaid volunteer time because that does not generate tax revenue. We estimate the unpaid volunteer time from Table 33 as half of the non-work part of community engagement. The remaining aggregate benefits can be understood as the MPL applied to non-volunteer community engagement hours. These remaining aggregate benefits are multiplied by the corresponding MTR from Table 46. The final column of Table 46 combines the four scenarios into a single weighted average using the weights from Table 39.

Overall, the time-reallocation effects of the IFC are expected to reduce annual government deficits by about \$35 billion. This is economically substantial, although somewhat less than the fiscal effects of reducing enrollment in Medicaid.

5. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this IFC, we should estimate the cost associated with regulatory review. There is uncertainty involved with accurately quantifying the number of entities that will review the IFC. However, for the purposes of this IFC we assume that on average, each of the 44 affected jurisdictions will have two contractors

per State to review this IFC. This average assumes that some State Medicaid agencies may use the same contractor, others may use multiple contractors to address the various provisions within this IFC, and some State Medicaid agencies may perform the review in-house. We also assume that each of the affected managed care plans (estimated to be 417 managed care plans) will review the IFC. Lastly, we assume that an average of two advocacy or interest group representatives from each State will review this IFC. In total, we estimate that 593 entities (88 State Contractors + 417 Managed Care Plans + 88 Advocacy and Interest Groups) will review this IFC. We acknowledge that this assumption may understate or overstate the costs of reviewing this IFC.

Using the wage information from BLS for medical and health service managers (Code 11-9111), we estimate that the cost of reviewing this IFC is \$113.42 per hour, including overhead and fringe benefits (https://www.bls.gov/oes/current/oes_nat.htm). Assuming the average reading speed of 250 words per minute, we estimate that it would take approximately 3.1 hours for staff to review half of this IFC ([93,000 words × 0.5]/250 words per minute/60 minutes per hour). For each entity that reviews the rule, the estimated cost is \$351.60 (3.1 hours × \$113.42). Therefore, we estimate that the total cost of reviewing this regulation is \$208,498.80 (\$351.60 per individual review × 593 reviewers).

D. Alternatives Considered

When considering alternatives, we reviewed existing statutory and regulatory definitions and frameworks from Medicaid and other Federal benefit programs, adopting them to the extent possible, where we determined additional information in this IFC was necessary. Recognizing that States vary considerably in their administrative capacity, eligibility system infrastructure, and prior experience with the community engagement requirement, we provide targeted flexibilities, where permitted by the WFTC legislation, to allow States to implement these requirements in a manner tailored to their specific needs. Given the detail and breadth of the provisions in this IFC, we present illustrative examples of alternatives considered, organized under three categories: Compliance and Verification Provisions, State Implementation, and Monitoring and Reporting.

1. Compliance and Verification Provisions

Section 1902(xx) of the Act prescribes specific requirements for how applicable individuals demonstrate compliance with the community engagement requirement (section 1902(xx)(2) of the Act). We aligned definitions of compliance activities as closely as possible with existing statutory and regulatory requirements across Medicaid and/or other Federal benefit programs to minimize disruption of States' existing eligibility systems and operational capacities. For instance, the

statute at section 1902(xx)(2)(F) and (G) of the Act refers to an individual's "monthly income" and "average monthly income," but does not further define how States should calculate monthly income for these purposes. For the calculation of an applicable individual's monthly income under new § 435.552(f) and average monthly income under new § 435.552(g), we define "monthly income" to have the same meaning as the individual's household income used for financial eligibility for Medicaid. Most applicable individuals are eligible for or enrolled in the adult group under § 435.119, which is a group that has an income standard based on MAGI using MAGI-based methodologies, as described in § 435.603. Similarly, most section 1115 demonstrations that have applicable individuals (as discussed in section II.B. of this IFC) have an income standard based on MAGI and use MAGI-based methodologies for the relevant demonstration population.

In some instances, we considered alternative approaches for operationalizing a new requirement in light of existing Medicaid eligibility and enrollment rules. For example, timeliness standards for Medicaid eligibility determinations at § 435.912¹⁵⁹ as implemented in this IFC require States to complete Medicaid eligibility determinations promptly and without undue delay. In general, the determination of eligibility for any individual may not exceed 90 days for applicants who apply on the basis of disability and 45 days for all other applicants, which includes individuals whose eligibility is being determined based on MAGI.

While we believe the 45-day timeliness standard under § 435.912 for MAGI beneficiaries is necessary to prevent delays in applicants' eligibility determinations and access to coverage, we recognized that the new provision may impose an additional requirement on States. Specifically, § 435.558(a) would require States to provide notice of noncompliance to an applicable individual whom the State is unable to verify as being compliant with the community engagement requirement. Upon receiving such notice, the individual would have 30 calendar days from the date they receive the notice to demonstrate community engagement, establish that they should be deemed to have demonstrated community

engagement, or show that they do not meet the definition of an applicable individual. States must account for this process when making eligibility determinations.

We considered taking no action in this IFC since depending on States' existing eligibility systems and operational capacities, the required 30-calendar day period for applicants to return information will not always result in a delay in completing a determination of eligibility for an applicable individual who receives notice of noncompliance at application. States that can make an eligibility determination for applicants who receive a notice of noncompliance must do so within the timeliness standard. However, we considered that not all applicants will respond to the notice early in the 30-calendar day period, and States are unable to notify the individual of an eligibility decision for failure to respond prior to the 30-calendar day period. We believe an exception is necessary to prevent States from being subject to compliance action for failure to meet the regulatory timeliness standard as a result of complying with section 1902(xx) of the Act. Therefore, we are adding § 435.912(e)(3) to provide a new exception to the timeliness standard at § 435.912(c)(3)(ii) for applicants who receive the notice of noncompliance under § 435.558(a) and when the State is unable to meet the 45-day timeliness standard due to the required 30-calendar day period discussed in this section of this IFC. When a State uses this exception, it must do so on a case-by-case basis and document the reason for the delay in the applicant's case record as required by § 435.912(f).

2. State Implementation

The WFTC legislation establishes specific requirements for State implementation of community engagement. These requirements include addressing the timing and standards for the implementation date, outreach processes, demonstration of good-faith effort, and conflict of interest safeguards with managed care plans. While this IFC aligns accordingly with these requirements, we believe that additional explanation is necessary for certain provisions to assist States in implementing them more efficiently.

Section 435.561(b)(1) and (2) newly requires States to send notices to beneficiaries 4, 5, or 6 months prior to the community engagement requirement becoming effective in the State and to beneficiaries who apply and enroll after the initial outreach notice is sent, but before the community engagement

requirement becomes effective in the State. This will ensure beneficiaries who newly enroll in the adult group described at § 435.119 or an applicable section 1115 demonstration will be made aware of the requirement.

We also require States to notify all individuals described in § 435.561(a) on a periodic basis thereafter and outline when States must provide outreach notices through at least two modalities on an ongoing basis at § 435.561(d). Under the authority given to the Secretary to specify standards for outreach notices, we define "periodic basis thereafter" to mean that for individuals described in § 435.561(a) outreach notices must be provided: (1) following a determination or redetermination of eligibility at application, at renewal described at section 1902(e)(14)(L) of the Act and § 435.916, and based on a change in circumstances; (2) when the State elects the short-term hardship exception in the State plan under § 435.555(a) and each time the State effectuates a short-term hardship event described in § 435.555(d)(2) and (3) (except for an occasion included as part of the State plan election) and (3) upon request by CMS, if State reported monitoring data described at § 435.562 or other information indicate a potential compliance issue with §§ 435.550 through 435.562. We believe this will allow States to align outreach notices with eligibility determination notices under § 435.917, since States must already provide information to individuals about their eligibility and rights and responsibilities. For example, States may align such notices by combining the content of the outreach notice with the eligibility determination notice or send a separate outreach notice when an eligibility determination notice is issued. We also believe this approach will allow States to keep individuals updated about changes in the State's short-term hardship exception policy with less burden by utilizing the outreach process already required by section 1902(xx)(8) of the Act. Finally, we believe that this will allow States to provide additional outreach, if requested by CMS, when States' community engagement monitoring data indicate potential problems or concerning trends, such as if a State is experiencing large shifts in month-over-month determination and redetermination outcomes, or greater disenrollments for procedural denials compared to other States. For more information about monitoring data States must submit and our approach to identify potential compliance issues

¹⁵⁹ While § 435.912 is subject to the section 71102 moratorium, the requirements for states to make eligibility determinations promptly and without undue delay and to process applications within 45 or 90 days was not amended by the 2024 Eligibility and Enrollment final rule.

that could result in additional outreach, see section II.O. of this IFC. While we are requiring States to conduct ongoing, periodic outreach each time an individual described at § 435.561(a) is provided an eligibility determination notice, States may choose to conduct additional outreach to individuals on an ad hoc or routine basis.

We considered defining outreach on a “periodic basis thereafter” to mean that States must conduct outreach upon enrollment for applicants determined eligible and at least every 6 or every 12 months thereafter for beneficiaries described at § 435.561(a) to provide a consistent time frame for all beneficiaries to receive outreach. While such a definition would provide consistency for all individuals and across all States, we recognize this could result in outreach that may not be meaningful as it was not necessarily aligned with the timing of the eligibility information that must already be provided when someone receives an eligibility determination notice. We also considered specifying when States should conduct periodic outreach in 2027 and 2028 or the first 2 years of implementation and then later permitting States to determine how frequently periodic outreach should occur after the first few years of implementation. While this would allow States to determine when it would be most effective to conduct outreach,

we were concerned that this may increase the likelihood that CMS would need to request additional outreach based on monitoring data if States did not conduct outreach frequently enough.

3. Monitoring and Reporting

We considered not including State data reporting requirements since section 71119 of the WFTC legislation does not prescribe new State reporting requirements specific to community engagement. However, we decided to require at § 435.562 that States submit data that is timely, complete, and of sufficient quality to support monitoring of State eligibility and enrollment operations concerning the implementation and impact of the community engagement requirement. While States already submit a considerable amount of data to CMS for monitoring and oversight of State eligibility operations and enrollment, these new data will assist CMS to maintain high levels of program integrity to ensure States implement the community engagement requirement under section 1902(xx) of the Act and maintain timely and accurate determinations and redeterminations of eligibility for all applicants and beneficiaries. As a result, at § 435.562(d), we require that States submit data elements for applicants and beneficiaries applying for and receiving

medical assistance, including individuals subject to the requirements of section 1902(xx) of the Act through five specified categories. We also outline at § 435.562(e) that failure to submit data or data that indicate compliance issues may be subject to corrective action under section 1904 of the Act, additional data collection, or additional outreach noticing as described at § 435.561(b). We believe these additional reporting requirements will support the agency’s oversight obligations, public transparency, and accountability of the State Medicaid agencies.

E. Accounting Statement

Consistent with the Office of Management and Budget (OMB) Circular A–4 (available at <https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf>), we have prepared an accounting statement (Table 47) showing the classification of the impact associated with the provisions of this IFC. The costs displayed in Table 47 include the one-time regulatory review costs, as well as the aggregate savings, costs, and transfers, adjusted for inflation through 2036 and then discounted to the base year (2026) at 3 percent and 7 percent, respectively. The costs in the accounting statement include both the one-time and annual estimates.

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TABLE 47: Accounting Statement

BENEFITS				
Annualized Monetized Benefits	<i>Primary Estimate</i>	<i>Units</i>		
		Year Dollars	Discount Rate	Period Covered
Aggregate benefits (millions)	37,214	2026	7%	2026-2035
	37,648	2026	3%	2026-2035
COSTS				
Annualized Monetized Costs	<i>Primary Estimate</i>	<i>Units</i>		
		Year Dollars	Discount Rate	Period Covered
Costs to Federal government (millions)	198.7	2026	7%	2026-2035
	183.6	2026	3%	2026-2035
Costs to States (millions)	72.2	2026	7%	2026-2035
	70.5	2026	3%	2026-2035
Costs to beneficiaries	19,907.1	2026	7%	2026-2035
	20,132.7	2026	3%	2026-2035
Regulatory review cost estimates	0.2	2026	n/a	2026
GOVERNMENT EFFECTS SUBTOTALS (INCLUDING TRANSFERS AND TABLE 46 BENEFITS)				
Annual Monetized Transfers	<i>Primary Estimate</i>	<i>Units</i>		
		Year Dollars	Discount Rate	Period Covered
From Federal Government to beneficiaries and relevant entities [*] (millions)	-42,503	2027	7%	2027-2036
	-43,040	2027	3%	2027-2036
From State Governments to beneficiaries and relevant entities [*] (millions)	-7,988	2027	7%	2027-2036
	-8,088	2027	3%	2027-2036
[*] such as State or local jurisdictions that reimburse providers for otherwise-uncompensated care				

BILLING CODE 4120-01-C**F. Regulatory Flexibility Act (RFA)**

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. Section 71119(d) of the WFTC legislation directs that not later than June 1, 2026, the Secretary of HHS shall promulgate an IFC for purposes of implementing section 1902(xx)(11)(d) of the Act, related to community engagement for certain adults. It also explicitly notes that any action taken to implement this section of the Act is not subject to section 533 of the

Administrative Procedures Act (5 U.S. Code 553), which generally requires Federal agencies to follow notice of proposed rulemaking procedures. Because this IFC is not preceded by a general notice of proposed rulemaking, the Regulatory Flexibility Act (RFA) does not apply to this IFC.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100

million in 1995 dollars, updated annually for inflation. In 2026, that threshold is approximately \$193 million. Because this IFC is not preceded by a general notice of proposed rulemaking, the UMRA does not apply to this IFC.

We have not calculated an additional financial impact on States, local or Tribal governments beyond what is reflected in the Collection of Information (section IV.) and the Regulatory Impact Analysis (this section, section V. of the IFC.)

H. Federalism

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

The provisions in this IFC impose substantial direct requirement costs on States. As mentioned in previous sections of this rule, the additional costs to States are attributable to necessary administrative and technical activities that will ensure high levels of program integrity in eligibility operations and data verification systems, in keeping with the cooperative Federalism that is central to the Medicaid program.

I. E.O. 14192, “Unleashing Prosperity Through Deregulation”

E.O. 14192, entitled “Unleashing Prosperity Through Deregulation” was issued on January 31, 2025, and requires that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” This rule, as finalized, is expected to be exempt from otherwise applicable requirements under E.O. 14192, per footnote 1 of OMB’s Accounting Methods.¹⁶⁰

This final regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

J. Conclusion

The policies in this IFC are expected to enable more efficient and cost-effective implementation of Public Law 119–21.

Mehmet Oz, Administrator of CMS, approved this document on May 27, 2026.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicare, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to families with dependent children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 438

Citizenship and naturalization, Civil rights, Grant programs-health, Individuals with disabilities, Medicaid, Reporting and recordkeeping requirements, Sex discrimination.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 600

Administrative practice and procedure, Health care, Health insurance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Section 431.213 is amended by revising paragraph (d) to read as follows:

§ 431.213 Exceptions from advance notice.

* * * * *

(d) The beneficiary’s whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (see § 431.231(d) for procedure if the beneficiary’s whereabouts become known). The provisions of this paragraph (d) sunset on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policies governing whereabouts unknown are implemented and effective on October 1, 2034, replacing the policies scheduled to sunset on that date;

* * * * *

■ 3. Section 431.231 is amended by adding paragraph (d) to read as follows:

§ 431.231 Reinstating services.

* * * * *

(d) If a beneficiary’s whereabouts are unknown, as indicated by the return of unforwardable agency mail directed to him, any discontinued services must be reinstated if his whereabouts become known during the time he is eligible for services. The provisions of this paragraph (d) sunset on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policies governing when a beneficiary’s whereabouts become known are

implemented and effective on October 1, 2034, replacing the policies scheduled to sunset on that date.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 4. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 5. Section 435.3 is amended in paragraph (a) by adding an entry for “1902(xx)” in sequential order to read as follows:

§ 435.3 Basis.

(a) * * *

1902(xx) Requirement for States to Establish Medicaid Community Engagement Requirement for Certain Individuals.

* * * * *

■ 6. Section 435.119 is amended by adding paragraph (d) to read as follows:

§ 435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL.

* * * * *

(d) *Community engagement.* As of the implementation date in accordance with § 435.559, the 50 States and the District of Columbia must provide that eligibility under this section is subject to the community engagement requirement described at §§ 435.550 through 435.563.

■ 7. Add §§ 435.550 through 435.563 under the undesignated center heading “Community Engagement Requirement” to read as follows:

* * * * *

Community Engagement Requirement

Sec.

435.550 Basis and scope.

435.551 Applicable individual.

435.552 Demonstrating community engagement.

435.553 Mandatory exceptions for certain applicable individuals.

435.554 Specified excluded individuals.

435.555 Optional exception for short-term hardship events.

435.556 Assessing compliance with the community engagement requirement.

435.557 Verifying compliance with or exception or exclusion from the community engagement requirement.

435.558 Noncompliance procedures.

435.559 Implementation timing for the community engagement requirement.

435.560 Good faith effort exemption.

435.561 State requirements for outreach.

435.562 Requirements for States to submit data for monitoring community engagement.

¹⁶⁰ See Accounting Methods under E.O. 14192. https://www.reginfo.gov/public/pdf/eo14192/Accounting_Methods_under_EO_14192.pdf.

435.563 Prohibition of waivers of the community engagement requirement.

* * * * *

Community Engagement Requirement

§ 435.550 Basis and scope.

Sections 435.550 through 435.563 implement section 1902(xx) of the Act and apply to the 50 States and the District of Columbia. These sections do not apply to the territories.

§ 435.551 Applicable individual.

An applicable individual is an individual who is not a specified excluded individual as defined at § 435.554 and who is—

(a) Eligible to enroll or is enrolled under the State plan under § 435.119; or

(b) Otherwise eligible to enroll or is enrolled in a demonstration project under section 1115(a)(2) of the Act that provides coverage that meets minimum essential coverage requirements as defined under § 435.4, and who is:

(1) At least 19 and under 65 years of age;

(2) Not pregnant;

(3) Not entitled to or enrolled for benefits under part A of title XVIII or enrolled for benefits under part B of title XVIII; and

(4) Not otherwise eligible to enroll under the State plan.

§ 435.552 Demonstrating community engagement.

(a) *General rule.* An applicable individual demonstrates community engagement for a month if the individual meets one or more of the following conditions:

(1) The individual works not less than 80 hours.

(2) The individual completes not less than 80 hours of community service.

(3) The individual participates in a work program for not less than 80 hours.

(4) The individual is enrolled in an educational program at least half-time.

(5) The individual engages in any combination of the activities described in paragraphs (a)(1) through (4) of this section, for a total of not less than 80 hours; however, States are not permitted to combine educational program hours with another activity if the individual is enrolled in an educational program at least half-time.

(6) The individual has a monthly income that is not less than the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)(C)), multiplied by 80 hours.

(7) The individual had an average monthly income over the preceding 6 months that is not less than the applicable minimum wage requirement

under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours, and is a seasonal worker, as described in section 45R(d)(5)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 45R(d)(5)(B)).

(b) *Definitions.* For purposes of this section—

Community service means unpaid work, completed voluntarily or because of a mandate by court order, with a structured program that is completed for the direct benefit of the community under the auspices of public or nonprofit organizations (including embedded activities of the program that allow an individual to develop skills necessary to complete community service). The public or nonprofit organizations:

(i) Include organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and other organizations.

(ii) Must provide oversight of the activity, which must not serve a partisan purpose, and have a process in place to track the community service completed by individuals, including the type of community service activity, dates and hours the community service is completed, and a point of contact who can confirm the hours completed.

Educational program means a program that is one of the following:

(i) An institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(ii) A program of career and technical education as defined in section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(5));

(iii) A high school as defined in title VIII of the Elementary and Secondary Education Act (20 U.S.C. 7801 *et seq.*); and

(iv) A State-approved program of study leading to a certificate of high school equivalence for an applicable individual who has not received a high school diploma.

Work means:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services (“in-kind” work); and

(iii) Unpaid work (other than community service as defined in this paragraph (b)).

Work program means a program that is one of the following:

(i) A program under title I of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) (29 U.S.C. 3111 *et seq.*);

(ii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(iii) A program of employment and training operated or supervised by a State or political subdivision of a State

that meets standards approved by the Governor of the State, including a program under subsection (d)(4) of section 6 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)), other than a supervised job search program or job search training program. However, a program under this subsection may include supervised job search or job search training as subsidiary activities as long as such activity is less than half the required hours of the program;

(iv) A program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs. For the purposes of this paragraph, any employment and training program of the Department of Labor or Veterans Affairs that serves veterans must be an approved work program; and

(v) A workforce partnership under subsection (d)(4)(N) of section 6 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)(N)).

(c) *Enrollment in an educational program.* An applicable individual’s enrollment status in an educational program (full-time, half-time, less than half-time) is determined by the school or institution.

(1) The enrollment status of the individual begins on the first day of the school term for the educational program.

(2) The enrollment status will continue through normal periods of attendance, vacation, and recess. During periods of vacation and recess, the enrollment status shall be based on the individual’s status just prior to the school break.

(3) The enrollment status will end at the end of the month that the student is expelled, withdraws, completes the school term and is not registered for the next school term (excluding optional terms such as winter or summer sessions), or graduates (unless the student is enrolled in another educational program).

(d) *Less than half-time enrollment in an educational program.* If an applicable individual is enrolled in an educational program for less than half-time as determined by the school, the educational program hours shall be the following:

(1) For educational programs that use credit hours:

(i) Multiply the number of each one credit hour of instruction by 3 to get the total of education hours in a week.

(ii) Multiply the weekly total as determined under paragraph (d)(1)(i) of this section by 4.33 weeks to get total hours in a 1-month period.

(2) For educational programs that do not use credit hours, the hours spent

attending class and participating in educational activities will count towards meeting this requirement.

(e) *Combination of activities.* An applicable individual may demonstrate community engagement for a month if the individual engages in any combination of activities described in paragraphs (a)(1) through (4) of this section for a total of not less than 80 hours.

(1) The hours for work under paragraph (a)(1) of this section, community service under paragraph (a)(2) of this section, and participating in a work program under paragraph (a)(3) of this section, need only be combined with educational program hours if the individual is enrolled in an educational program less than half-time.

(2) The hours for work under paragraph (a)(1) of this section, community service under paragraph (a)(2) of this section, and participating in a work program under paragraph (a)(3) of this section must be determined separately and based on the time spent on the specific activity in such month.

(i) If the monthly income is less than the applicable Federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours, and the agency does not have documentation regarding the number of hours worked, the agency may calculate the hours for work under paragraph (a)(1) of this section based on the monthly income as determined under paragraph (f)(2) of this section provided that the agency must use a reasonable method to allocate work hours between members of the household.

(ii) If the agency uses the option under paragraph (e)(2)(i) of this section, the agency must calculate the hours for work by dividing the monthly income as determined under paragraph (f)(2) of this section by the applicable Federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C).

(3) The hours for less than half-time enrollment in an educational program must be calculated as provided in paragraph (d) of this section.

(4) After the agency determines an applicable individual's hours for work, completing community service, participating in a work program, and less than half-time enrollment in an educational program, the hours must be added together. Adding the hours will provide the total hours for the combined activities.

(f) *Monthly income.* (1) An applicable individual demonstrates community engagement for a month if the individual has a monthly income that is not less than the applicable Federal minimum wage requirement under 29

U.S.C. 206(a)(1)(C) multiplied by 80 hours.

(2) The agency must determine the monthly income based on the individual's MAGI-based income, for their MAGI-based household, as defined at § 435.603, and applied to a month in the period under § 435.556(a), as applicable for demonstrating community engagement.

(g) *Average monthly income for seasonal workers.* (1) An applicable individual demonstrates community engagement for a month if the individual is a seasonal worker as described in 26 U.S.C. 45R(d)(5)(B) and had an average monthly income over the preceding six months that is not less than the applicable Federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours.

(2) The agency must determine the average monthly income based on the individual's MAGI-based income, for their MAGI-based household, as defined at § 435.603, and applied to a month in the period under § 435.556(a), as applicable for demonstrating community engagement.

§ 435.553 Mandatory exceptions for certain applicable individuals.

A State must deem an applicable individual to have demonstrated community engagement under § 435.552 for a month if—

(a) For part or all of that month, the individual was:

(1) Under the age of 19 years;

(2) Entitled to or enrolled for Medicare benefits under part A or enrolled for benefits under part B of title XVIII of the Act;

(3) Described in any mandatory coverage groups in subclauses (I) through (VII) of section 1902(a)(10)(A)(i) of the Act under the Medicaid State plan; or,

(4) A specified excluded individual as defined at § 435.554.

(b) At any point during the 3-month period ending on the first day of that month, the individual was an inmate of a public institution.

§ 435.554 Specified excluded individuals.

(a) For purposes of this section—

Caretaker relative means a relative of a dependent child or a disabled individual, as those terms are defined in this section, by blood, adoption, or marriage with whom the child or disabled individual is living, who assumes primary responsibility for the dependent child's or disabled individual's care, and who is one of the following—

(i) The dependent child's or disabled individual's father, mother, grandfather,

grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(ii) The disabled individual's husband, wife, son, daughter, stepson, stepdaughter, grandson, or granddaughter.

(iii) The spouse of such parent or relative, even after the marriage is terminated by death or divorce.

(iv) At State option, another relative of the dependent child or disabled individual based on blood (including those of half-blood), adoption, or marriage; the domestic partner of the parent or other caretaker relative; or an adult with whom the dependent child or disabled individual is living and who assumes the primary responsibility for the dependent child or disabled individual's care. To the extent a State has elected to include any of these relationships for the purpose of eligibility for the group at § 435.110, the same elections shall apply for this definition for such State.

Dependent child means a child 13 years of age or under who relies on another individual for care.

Disabled individual means an individual who meets the Americans with Disabilities Act definition of disability at 28 CFR 35.108. An individual need not be eligible for Medicaid or other Federal programs on the basis of a disability to be a disabled individual under this definition.

Family caregiver means an adult family member or other individual who has a significant relationship with, and who provides care within a broad range of assistance to, a dependent child or a disabled individual as both terms are defined in this section.

Guardian means an adult appointed by a court to care for and make personal decisions for a dependent child or disabled individual, as defined in this section, who cannot care for themselves, in accordance with applicable State law.

Parent means an individual with the legal status of a mother or father, including by adoption, in accordance with applicable State law, who provides some level of care to a dependent child or disabled individual, as defined in this section.

(b) An individual who meets the criteria for one or more of the categories described in paragraph (c) of this section is excluded from the definition of an applicable individual as defined at § 435.551. Community engagement is not a condition of eligibility for specified excluded individuals.

(c) An individual is a specified excluded individual if he or she meets one of the following:

(1) The individual meets the definition of the eligibility group serving former foster care children, described at section 1902(a)(10)(A)(i)(IX) of the Act as amended by Public Law 115–271, regardless of whether the individual turned age 18 on or after January 1, 2023.

(2) The individual meets the definition of Indian at § 447.51 of this subchapter.

(3) The individual is a parent, guardian, caretaker relative, or family caregiver, as each is defined in this section, and for family caregivers, meets one of the criteria identified at paragraphs (c)(1)(i)(A) through (C) of this section. For purposes of this exclusion:

(i) An individual who is a family caregiver as defined in this section is a specified excluded individual if he or she meets one of the following criteria:

(A) The individual primarily resides with a dependent child or disabled individual, as these terms are defined in this section, for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature.

(B) The individual is a relative (as specified in the “caretaker relative” definition in this section, without regard to the requirements to live with and to assume primary responsibility) of a dependent child or disabled individual, as these terms are defined in this section, for whom he or she provides assistance that occurs on a regular basis and is not solely incidental in nature, and with whom he or she does not reside.

(C) The individual does not reside with and is not a relative (as specified in the “caretaker relative” definition in this section, without regard to the requirements to live with and to assume primary responsibility) of a dependent child or disabled individual, as these terms are defined in this section, for whom he or she provides not less than 80 hours of assistance that is not solely incidental in nature per month.

(ii) In residences with more than one parent, guardian, caretaker relative, or family caregiver, multiple individuals who meet the relevant definitions at paragraph (a) of this section may qualify as a specified excluded individual as described in this section.

(4) The individual is a veteran with a temporary or permanent disability from the Department of Veterans Affairs, rated as 100 percent (total) under 38 U.S.C. 1155.

(5) The individual is medically frail or otherwise has special medical needs. For purposes of this exclusion:

(i) An individual who is medically frail or otherwise has special medical needs is defined as an individual whose physical, mental, or other behavioral health condition significantly impairs the individual’s ability to comply with the community engagement requirement in this subpart and is an individual:

(A) Who is blind or disabled (as defined in section 1614 of the Social Security Act);

(B) With a substance use disorder, excluding an individual in stable recovery (which means, an individual who is in recovery for 5 or more years);

(C) With a disabling mental disorder;

(D) With a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more activities of daily living; or

(E) With a serious or complex medical condition which is a medical condition that is life threatening, seriously disabling without necessarily being life threatening, causing significant pain or discomfort that can cause serious interruptions to life activities, requiring a major time or effort commitment from caregivers for a substantial period of time, requiring frequent monitoring, associated with severe consequences or negative consequences for someone else, affecting multiple organ systems, requiring management to tight physiological parameters, requiring coordination of multiple specialties, requiring treatment that carries a risk of serious complications, or requiring adjustment in non-medical environments.

(ii) The State must develop a list of diseases, diagnoses, disorders, or other health conditions to identify individuals who meet the criteria in paragraphs (a)(5)(i)(A) through (E) of this section.

(A) The list must be auditable, justifiable, and consistent with the definitions established in paragraphs (a)(5)(i)(A) through (E) of this section.

(B) The State must revise this list on a regular basis to add or remove diseases, diagnoses, disorders, or health conditions based on the State’s experience applying this exclusion.

(C) If an individual does not have a disease, diagnosis, disorder, or health condition on this list, the State must have reasonable processes and criteria in place for such individual to request consideration for the exclusion for individuals who are medically frail or otherwise have special medical needs.

(6) The individual is compliant with any requirements imposed by the State, in accordance with section 407 of the Act.

(7) The individual is a member of a household that receives Supplemental

Nutrition Assistance Program (SNAP) benefits under 7 U.S.C. 2015 and is not exempt from a work requirement under such Act.

(8) The individual is participating in a drug addiction or alcoholic treatment and rehabilitation program, as defined in section 3(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(h)). States may establish a minimum time commitment, consistent with appropriate clinical guidelines, for participation in such a program.

(9) The individual is an inmate of a public institution, as defined at § 435.1010.

(10) The individual is pregnant or entitled to postpartum medical assistance under section 1902(e)(5) or (16) of the Act.

§ 435.555 Optional exception for short-term hardship events.

(a) *Scope.* At State option, the agency may provide that an applicable individual, as defined at § 435.551, is deemed to have demonstrated community engagement, as defined at § 435.552, for a month in which, for all or part of such month, the individual experiences any one of the short-term hardship events described in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section—

(1) *Dependent* means an individual who is:

(i) The minor (as defined under State law) child of an applicable individual who is living with the applicable individual;

(ii) The tax dependent of an applicable individual (whether or not the tax dependent is a minor child of the applicable individual or residing with the applicable individual); or

(iii) An individual for whom the applicable individual has been appointed a guardian by a court.

(2) *Individual acting on behalf of the applicable individual* means any individual from whom a State is required to accept an application under § 435.907(a).

(c) *Procedures.* If the agency elects the option described in paragraph (a) of this section, it must provide, including as part of the noncompliance procedures at § 435.558(c)(1):

(1) Notice, as described under § 435.561(b)(3)(ii), informing applicable individuals that the State offers a short-term hardship exception from the community engagement requirement, and, for the circumstances in paragraphs (d)(2) and (3) of this section, the anticipated end date of the exception;

(2) For the circumstances in paragraphs (d)(1) and (4) of this section, the State must also provide:

(i) Notice of the method by which an applicable individual or an individual acting on behalf of the applicable individual may request a short-term hardship exception;

(ii) Notice of the timeframe for requesting a short-term hardship exception;

(iii) A timely process for determining whether a request for a short-term hardship exception will be granted;

(iv) Notice to the applicable individual of the State's determination, which shall include the anticipated end date of the exception (if granted); and

(v) A process under which the applicable individual or an individual acting on behalf of the applicable individual can appeal an adverse determination.

(d) *Short-term hardship event.* A short-term hardship event exists when, for all or part of a month, and subject to a request in the circumstances described in paragraphs (d)(1) and (4) of this section by an applicable individual or an individual acting on behalf of the applicable individual, the criteria for any of the following circumstances are met:

(1) The applicable individual receives:

(i) Inpatient hospital services as defined at § 440.10 of this subchapter, nursing facility services as defined at § 440.155 of this subchapter, services in an intermediate care facility for individuals with intellectual disabilities as defined at § 440.150 of this subchapter, or inpatient psychiatric hospital services including the services defined at § 440.160 of this subchapter for individuals under the age of 21 without regard to whether such services are in an institution for mental diseases; or

(ii) Other services of similar acuity, including:

(A) Inpatient services furnished in a critical access hospital consistent with § 440.170(g) of this subchapter;

(B) Inpatient services furnished in an emergency hospital consistent with § 440.170(e) of this subchapter;

(C) Inpatient services furnished in an institution for mental diseases;

(D) Inpatient services furnished by other facilities that are not covered under Medicaid but are otherwise recognized by the State; and,

(E) Noninstitutional services that an applicable individual receives that, but for the receipt of such services, would likely result in the applicable individual receiving services specified in paragraphs (d)(1)(i) and (d)(1)(ii)(A) through (D) of this section, regardless of whether they are received in an institutional setting.

(iii) States must use the definition of "inpatient" at § 440.2 of this subchapter for any inpatient services described in paragraphs (d)(1)(i) and (ii) of this section.

(2) The applicable individual resides in a county or equivalent unit of local government in which there exists an emergency or disaster declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

(i) A short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*) exists when the emergency affects the ability of applicable individuals to demonstrate community engagement in a particular county or other equivalent unit of local government, or multiple counties, or statewide.

(ii) A State must timely notify CMS of its plan to effectuate a short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act.

(iii) CMS will review States' use and implementation of a short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act to ensure compliance with paragraph (d)(2)(i) of this section.

(iv) The duration of an exception for an emergency or disaster declared by the President pursuant to the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) will be the first month in which the incident period begins and through at least the end of the month in which the incident period ends, and may extend beyond such month if approved by CMS upon request of the State, based on information the State provides in support of an extended period. The State must base its request for a longer duration on information showing that barriers to demonstrating the community engagement requirement under § 435.552 in the relevant area persist.

(3) Through a request from the State to CMS made in an electronic or hard-copy format, the State demonstrates and CMS determines, based on data from the U.S. Bureau of Labor Statistics or another reliable source such as a State labor department, that the applicable individual resides in a county or equivalent unit of local government in which the unemployment rate is at or above the lesser of—

(i) 8 percent; or

(ii) 1.5 times the national unemployment rate.

(4) The applicable individual, or the dependent of such individual, must travel outside of their community of residence for an extended period of time (which could be for part or all of a month or longer) to receive medical services necessary to treat a serious or complex medical condition, as defined at § 435.554(c)(5)(i)(E), that are not available within their community of residence.

(i) If the applicable individual does not travel with the dependent, then, during the month or months in which the dependent must travel, the applicable individual must demonstrate having taken leave from employment or having absented themselves from other community engagement activities for reasons related to the dependent's condition or travel, such as, but not limited to:

(A) Taking the dependent to local medical appointments related to or in preparation for the medical appointment that requires the travel;

(B) Conducting logistical activities relating to the travel;

(C) Maintaining primary responsibility for communicating with the dependent's medical providers.

(ii) [Reserved]

(e) *Request from applicable individual not required.* A State must not require an applicable individual, or an individual acting on behalf of the applicable individual, to make a request for the circumstances described in paragraphs (d)(2) and (3) of this section.

(f) *Excluded individuals.* A State must not apply paragraph (a) of this section to a specified excluded individual defined at § 435.554.

§ 435.556 Assessing compliance with the community engagement requirement.

(a) A State must require applicable individuals, as defined at § 435.551, to demonstrate community engagement under § 435.552, or be deemed to demonstrate community engagement under § 435.553 or, if applicable, § 435.555, as a condition of eligibility for medical assistance. The State must require—

(1) For an applicable individual who files an application for medical assistance under a State plan, or a waiver of such plan, demonstration of community engagement for at least one, but not more than 3 consecutive months, as specified in the State plan, immediately preceding the month of application.

(2) For an applicable individual who is enrolled and receiving medical assistance under a State plan, or waiver of such plan, demonstration of community engagement for 1 or more

months, as specified in the State plan and subject to paragraph (b) of this section, whether or not consecutive—

(i) During the period between the effective date of such individual's most recent determination or redetermination at renewal, as applicable, and the date the individual's renewal is due, consistent with section 1902(e)(14)(L) of the Act and § 435.916, as applicable, if the State has not opted to conduct more frequent verifications of community engagement compliance under § 435.557(d);

(ii) During the period between the most recent demonstration of community engagement and the date the individual's next demonstration of community engagement is due, consistent with § 435.557(d), if the State has opted to conduct more frequent verifications of community engagement compliance as provided in § 435.557(d); or

(iii) During the period between the effective date of such individual's most recent determination or redetermination at renewal, as applicable, and the end of the month prior to the month in which the individual becomes an applicable individual as a result of a redetermination based on a change in circumstances in accordance with § 435.916(d).

(b) A State must not require an applicable individual to demonstrate community engagement for a period that exceeds the period specified in paragraph (a)(2)(i), (ii), or (iii) of this section, as applicable.

(c) A State may not apply the requirements in paragraph (a) of this section to a specified excluded individual defined at § 435.554.

(d) A State must inform applicants and beneficiaries of the State's eligibility determination consistent with §§ 435.917 and 435.918 and part 431, subpart E of this subchapter, which includes a clear statement of the basis of eligibility consistent with § 435.917(b)(1)(i), or a statement of the State's intended action and the specific reasons for the action consistent with § 431.210(a) and (b) of this subchapter, as applicable, which must specify whether the individual:

(1) Meets the criteria as a specified excluded individual as defined in § 435.554; or

(2) Is determined to be an applicable individual as defined at § 435.551, and whether the individual demonstrates community engagement under § 435.552 or is deemed to have demonstrated community engagement under § 435.553 or, if applicable, § 435.555, for the month(s) specified in accordance with paragraph (a) of this section.

§ 435.557 Verifying compliance with or exception or exclusion from the community engagement requirement.

(a) *Definitions.* For purposes of this section—

Period of enrollment means a continuous period of enrollment in coverage under the State plan or waiver without the individual being disenrolled, regardless of the number of consecutive eligibility periods, of redeterminations or renewals, or of transitions between eligibility groups.

Reliable information available to the State means, for purposes of verifying compliance, deemed compliance or exclusion from the community engagement requirement in accordance with §§ 435.550 through 435.563, information necessary for determining eligibility to which the agency has access or should have access including, but not limited to:

(i) Information from electronic data sources that the agency has determined to be effective consistent with paragraph (b)(1)(ii) of this section, as documented in the agency's verification plan in accordance with paragraph (b)(1)(iii) of this section;

(ii) Information from other State or local agencies;

(iii) Information related to community engagement from Federal agencies and other data sources provided through the electronic service established by the Secretary, in accordance with § 435.949;

(iv) Information in the State's eligibility system;

(v) Information in the individual's case record;

(vi) Payroll data;

(vii) Claim(s) relevant to the individual that have been adjudicated in the preceding 12 months, including those that have been paid, pending or denied; and

(viii) Encounter data, as relevant to the individual, for the preceding 12 months.

(b) *Requirement to verify eligibility.*

The agency must establish processes to use reliable information available to the State to verify that an applicable individual has demonstrated community engagement in accordance with §§ 435.552 and 435.556, or was deemed to have demonstrated community engagement under § 435.553 or, if applicable, § 435.555, or that an individual is a specified excluded individual under § 435.554, before requesting additional information from the individual.

(1) The agency—

(i) Must identify data sources that provide reliable information relevant to verifying that an applicable individual demonstrated or is deemed

to have demonstrated community engagement or that an individual is a specified excluded individual.

(ii) May determine that establishing a connection to or process to obtain information from a data source would not be effective, but the agency must consider such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on documentation and the impact on program integrity in terms of the potential for ineligible individuals to be enrolled and for eligible individuals to be denied coverage.

(iii) Must document in its verification plan under § 435.945(j) its policies and procedures for verifying compliance with the community engagement requirement under this subpart, including an identification of the electronic data sources that the agency uses consistent with paragraph (b)(1)(i) of this section.

(iv) Must request and use information from the data sources identified and documented in its verification plan consistent with paragraphs (b)(1)(i) and (iii) of this section.

(2) Except with respect to verifying an individual is a specified excluded individual on the basis of being medically frail or otherwise having special medical needs as defined at § 435.554(c)(5), subject to paragraph (g)(1) of this section, when there is no reliable information available to the State or the reliable information available to the State is not reasonably compatible with the information provided by or on behalf of the individual, the agency must seek additional information from the individual to verify the individual has demonstrated or is deemed to have demonstrated community engagement or that the individual is a specified excluded individual, in accordance with the following rules:

(i) Before January 1, 2028, the agency may require documentation or accept other information as provided in § 435.952(c) when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual.

(ii) Beginning on January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the agency must require documentation whenever documentation is reasonably available.

(iii) The agency must:

(A) Accept information other than documentation to verify an individual's eligibility when there is no reasonably available documentation; and

(B) May not deny or terminate eligibility solely because the individual is unable to produce documentation where none exists or is reasonably available but may establish criteria for requiring the individual to provide specific information considered sufficient to verify the individual's eligibility in the absence of reasonably available documentation.

(3) The agency must comply with the requirements at §§ 435.558 and 435.952(d) and provide individuals with the opportunity to furnish information and documentation required to verify that the individual has demonstrated community engagement or is deemed to have demonstrated community engagement in accordance with §§ 435.552 and 435.556, or § 435.553 or, if applicable, § 435.555, or is a specified excluded individual as defined at § 435.554, before terminating or denying eligibility based on reliable information available to the State.

(4) The agency must accept information and documentation related to the community engagement requirement under this subpart from the individuals and via the modalities specified at § 435.907(a).

(c) *Verification at application and renewal.* The State must verify that an applicable individual has demonstrated or is deemed to have demonstrated community engagement for the period specified at § 435.556.

(1) *Requirement to check all reliable information available to the State.* The State may not limit the reliable information available to the State that is checked to specific activities or other means of demonstrating community engagement under § 435.552, or to specific means of being deemed to have demonstrated community engagement under § 435.553 or, if applicable, § 435.555, or to specific specified excluded individual statuses under § 435.554, but must continue to check reliable information available to the State until the agency verifies whether an individual who appears to be an applicable individual has demonstrated community engagement, is deemed to have demonstrated community engagement, or is not an applicable individual because they are a specified excluded individual.

(i) The agency must attempt to verify the individual's specified excluded individual status or that the individual demonstrated community engagement or was deemed to have demonstrated

community engagement using all reliable information available to the State for all relevant months before requesting additional information from the individual.

(A) Only after checking all reliable information available to the State without successfully verifying compliance, deemed compliance, or specified excluded individual status may the agency request additional information from the individual and initiate the noncompliance procedures under § 435.558, as appropriate.

(B) An individual must not be required to provide documentation or other additional information unless information needed by the agency could not be verified using reliable information available to the State, including when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual.

(ii) The agency is not required to continue checking reliable information available to the State after the agency verifies compliance, deemed compliance, or status as a specified excluded individual, unless the agency has information indicating an individual whom the agency verified demonstrated or is deemed to have demonstrated community engagement may qualify as a specified excluded individual, as described in paragraph (c)(2) of this section.

(2) *Requirement to apply exclusions.* The agency must determine that an individual is a specified excluded individual whenever the agency has sufficient information to determine the individual qualifies as such, regardless of whether the individual also demonstrates community engagement in accordance with §§ 435.552 and 435.556 or meets the criteria for an exception under § 435.553 or, if applicable, § 435.555.

(3) *Requirement to enroll eligible individuals and verify potential exclusion post-enrollment.* If the agency has sufficient information to verify an individual meets or is deemed to meet the community engagement requirement and has information that suggests, but needs more information to verify that the individual is a specified excluded individual, the agency must enroll the individual promptly using the verified information and attempt to verify eligibility for the exclusion post-enrollment or, if the individual is already enrolled, following the redetermination of eligibility.

(d) *State option to conduct more frequent verifications.* States may verify

that an applicable individual has met the requirement to demonstrate community engagement more frequently than each regularly scheduled redetermination, consistent with § 435.556(a)(2)(ii).

(1) States electing to verify that an applicable individual has met the requirement to demonstrate community engagement between regularly scheduled redeterminations must comply with the requirements of this subpart to verify, consistent with this section, that an applicable individual met the requirement to demonstrate community engagement in accordance with §§ 435.552 and 435.556 or was deemed to have demonstrated community engagement under § 435.553 or, if applicable, § 435.555.

(2) For beneficiaries who were determined to be applicable individuals at their last determination or redetermination of eligibility, the agency must check all reliable information available to the State to determine if the individual newly qualifies as a specified excluded individual prior to assessing compliance or deemed compliance with the community engagement requirement each time the state conducts a more frequent verification.

(3) If the individual continues to be an applicable individual, the agency must attempt to verify that the individual demonstrated community engagement in accordance with §§ 435.552 and 435.556, or was deemed to have demonstrated community engagement, under § 435.553 or, if applicable, § 435.555, using all reliable information available to the State for all relevant months, before requesting additional information and documentation from the individual consistent with this section and initiating the noncompliance procedures under § 435.558.

(4) The agency may not reverify the specified excluded status of an individual between regularly scheduled redeterminations if the individual was determined to be a specified excluded individual at their last determination or redetermination of eligibility or during a more frequent verification of community engagement under this section unless the agency has information indicating the individual's specified excluded individual status has changed.

(e) *Requirement to use the electronic service established by the Secretary.* The agency must obtain information regarding compliance with or exception or exclusion from the community engagement requirement through the electronic data service established by

the Secretary to the extent the information is available through such service, consistent with §§ 435.945 and 435.949, except as provided for in § 435.945(k) and paragraph (e)(2) of this section.

(1) If information from a new data source becomes available through the electronic data service established by the Secretary that contains reliable information relevant to verifying the community engagement requirement in this subpart, the State must establish a connection through such service, or establish a direct connection to or implement an alternative data source or mechanism if approved for flexibility under § 435.945(k), to obtain such information from that data source as soon as practicable, but no later than 12 months after information from the data source first becomes available through the service established by the Secretary.

(2) For the purposes of verifying compliance or deemed compliance with, or exclusion from, the community engagement requirement, the Secretary may determine a waiver as described in § 435.945(k) is not required for the State to establish a direct connection or use an alternative mechanism to access information available from a Federal data source that is accessible through the service established by the Secretary, if the Secretary determines that such direct connection or alternative mechanism is likely to satisfy the criteria in § 435.945(k). In the event the State does not access the Federal data source through the service established by the Secretary and the Secretary determines that a waiver as described in § 435.945(k) is not necessary, the State must establish a direct connection or alternative mechanism within the timeframe specified in paragraph (e)(1) of this section.

(f) *Verification of medical frailty and privacy requirements for certain populations.* (1) The agency must attempt to verify that an individual is a specified excluded individual on the basis that the individual is medically frail or otherwise has special medical needs as defined at § 435.554(c)(5) using reliable information available to the State, including claim(s) relevant to the individual that have been adjudicated in the preceding 12 months, including those that have been paid, pending or denied, and encounter data, as relevant to the individual.

(i) Before January 1, 2028, when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the agency may require documentation or accept a statement or

other information under penalty of perjury that provides sufficient information, as determined by the State, to verify an applicant or beneficiary is medically frail or otherwise has special medical needs, each time the State verifies an individual's medical frailty.

(ii) Beginning on January 1, 2028, the agency may accept a statement or other information provided under penalty of perjury that provides sufficient information, as determined by the State, to verify qualification for the exclusion only once during the beneficiary's period of enrollment defined at paragraph (a) of this section when there is no reliable information available to the State or the reliable information available to the State is not reasonably compatible with the information provided by or on behalf of the individual.

(A) At the individual's first regularly scheduled redetermination after such status was determined using the individual's statement provided under penalty of perjury or other information as described in this paragraph (f)(1)(ii), the agency must verify that the individual is medically frail or otherwise has special medical needs using reliable information available to the State, or, if reliable information available to the State is not sufficient for verification, using documentation submitted by or on behalf of the individual.

(2) States that elect to provide an optional exception for short-term hardships under § 435.555 must—

(i) Attempt to use reliable information available to the State before seeking additional information from the individual to verify whether, for part or all of a month for which an applicable individual is required to demonstrate community engagement, the applicable individual received care specified at § 435.555(d)(1) or the applicable individual or their dependent had to travel outside of their community of residence for an extended period of time to receive medical services specified at § 435.555(d)(4).

(ii) Apply an automatic short-term hardship exception to applicable individuals if, for part or all of a month for which such applicable individuals are required to demonstrate community engagement, the individuals reside in a county or equivalent unit of local government in which there exists an emergency or disaster as specified at § 435.555(d)(2) or for which the Secretary has approved an unemployment-based short-term hardship exception as specified at § 435.555(d)(3), without requesting any

additional information from such applicable individuals.

§ 435.558 Noncompliance procedures.

(a) *Provision of notice of noncompliance.* If a State is unable to verify that an applicable individual has met the requirement to demonstrate community engagement under §§ 435.552 and 435.556, or is deemed compliant under § 435.553 or, if applicable, § 435.555, as specified in paragraph (b) of this section, the State must:

(1) Provide such individual with the notice of noncompliance described in paragraph (c) of this section;

(2) Provide such individual with a period of 30 calendar days beginning on the date on which such notice of noncompliance is received by the individual consistent with paragraph (c)(4) of this section, to make a satisfactory showing to the agency—

(i) Of compliance with such requirement (including, as applicable, by showing that such medically frail or otherwise has special medical needs using reliable information available to the State, or, if reliable information available to the State is not sufficient for verification, using documentation submitted by or on behalf of the individual.

(B) If an enrollee declares specified excluded individual status on the basis of being medically frail or otherwise having special medical needs after having sought such status on or after January 1, 2028, on the basis of a statement provided under penalty of perjury or other information described in this paragraph (f)(1)(ii) during the same period of enrollment defined at paragraph (a) of this section, the agency must verify that status using reliable information available to the State, or, if reliable information available to the State is not sufficient for verification, using documentation submitted by or on behalf of the individual.

(iii) After verifying an individual's specified excluded individual status on the basis of being medically frail or otherwise having special medical needs using reliable information available to the State or documentation submitted by or on behalf of the individual, the agency must reverify this status at least every 12 months.

(2) The agency must comply with all applicable Federal privacy requirements including section 1902(a)(7) of the Act; part 431, subpart F of this subchapter; the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d *et seq.*); part 2 of this title; and any other applicable Federal privacy laws when accessing, storing, and

handling data obtained to verify that an individual is medically frail or otherwise has special medical needs or is participating in a drug addiction or alcoholic treatment and rehabilitation program.

(g) *Verification of mandatory and optional exceptions.* (1) States must comply with the requirements in paragraph (b)(2) of this section when verifying qualification for a mandatory exception under § 435.553 except that if the individual provided information on an application, renewal or other State form, or when reporting a change in circumstances in accordance with paragraph (b)(4) of this section indicating they qualify for an exception and there is no reliable information available to the State, the State may elect the option under section 1902(xx)(3)(A) of the Act not to seek further information from the applicable individual demonstrated or should be deemed to have demonstrated community engagement under § 435.553 or, if applicable, § 435.555, for each month required under the State plan); or (ii) That such requirement does not apply to such individual on the basis that such individual does not meet the definition of applicable individual under § 435.551, including by meeting the criteria for one or more of the categories of a specified excluded individual as defined at § 435.554.

(3) Continue to furnish Medicaid for an enrolled beneficiary until the individual is determined ineligible consistent with § 435.930(b).

(b) *Defining “unable to verify” community engagement.* The agency is considered to be unable to verify that an applicable individual is compliant with the requirement to demonstrate community engagement as follows:

(1) At application, the agency is unable to verify compliance with community engagement when it does not have sufficient information after reviewing the information provided by the individual at application and the reliable information available to the State to determine that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required under the State plan.

(2) As part of a renewal under section 1902(e)(14)(L) of the Act and § 435.916, the agency is unable to verify compliance with community engagement when it does not have sufficient information to determine that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required under the State plan, after—

(i) Reliable information available to the State accessed at renewal consistent with § 435.916(a)(2) are not sufficient to verify compliance with the community engagement requirement; or

(ii) The renewal form provided to the beneficiary in accordance with § 435.916(a)(3) for those whose eligibility cannot be renewed based on reliable information under § 435.916(a)(2) is not returned or the information returned on the renewal form is not sufficient to verify compliance with community engagement.

(3) If applicable, as part of the more frequent verification of compliance under § 435.557(d), the agency is unable to verify compliance with the community engagement requirement when it does not have sufficient information to determine that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required under the State plan after—

(i) Accessing reliable information in accordance with § 435.557(d) and information is not sufficient; or

(ii) Accessing reliable information in accordance with § 435.557(d) and following the State’s procedures under § 435.952(d) to request information from the individual, when the requested information is not returned or the information returned is not sufficient.

(c) *Content and form of noncompliance notice.* A notice of noncompliance—

(1) Must include clear statements containing the following information—

(i) How to make a satisfactory showing of compliance with the community engagement requirement, including:

(A) Which month(s) will be assessed by the State in accordance with § 435.556(a);

(B) How to show the individual demonstrated community engagement under § 435.552; and

(C) How to show the individual should be deemed to have demonstrated community engagement as specified at § 435.553 or, if applicable, § 435.555;

(ii) How to make a satisfactory showing that the community engagement requirement does not apply to the individual on the basis that the individual does not meet the definition of an applicable individual at § 435.551, including because the individual meets the criteria for one or more of the categories of a specified excluded individual under § 435.554;

(iii) The deadline for providing the information under paragraph (c)(1)(i) or (ii) of this section to the State;

(iv) A description of how the information under paragraph (c)(1)(i) or (ii) of this section may be submitted to the State through any of the modalities described in § 435.907(a);

(v) A description of the consequences of noncompliance with the community engagement requirement and failure to respond to the notice of noncompliance for Medicaid eligibility and eligibility for advance payments of the premium tax credit (APTC) and the premium tax credit (PTC) used to pay for coverage through a Health Insurance Exchange;

(vi) How such individual may reapply for medical assistance under the State plan (or a waiver of such plan) if the individual’s application is denied or the individual is disenrolled from coverage under the State plan or waiver, as applicable; and

(vii) For States that have elected to provide the short-term hardship exception under § 435.555, the information about short-term hardship events described in § 435.555(c).

(2) Must be provided in a manner consistent with § 435.905(b).

(3) Must, if provided in electronic format, comply with § 435.918(b).

(4) Is considered to be received 5 days after the date on the notice, unless the applicant or beneficiary shows that he or she did not receive the notice within the 5-day period.

(d) *State responsibilities in the event of no satisfactory showing.* If no satisfactory showing is made after the 30-calendar day period consistent with paragraph (a)(2) of this section, the State must—

(1) Consider all other bases of eligibility for medical assistance under the State plan (or waiver of such plan) in accordance with §§ 435.911 and 435.916(f) prior to denying coverage at application or determining that an individual is ineligible;

(2) For individuals determined ineligible under the State plan (or waiver of such plan) after considering all bases of eligibility, as applicable:

(i) Deny such individual’s application and provide written notice and fair hearing rights consistent with §§ 435.917 and 435.918 and part 431, subpart E of this subchapter;

(ii) Disenroll such beneficiary not later than the end of the month following the month in which the 30-calendar day period under paragraph (a)(2) of this section ends and after the provision of advance written notice and fair hearing rights consistent with §§ 435.917 through 435.918 and part 431, subpart E of this subchapter prior to the disenrollment;

(iii) Include in the clear statement of the specific reasons supporting the

intended action under § 431.210(b) of this subchapter that the individual failed to:

(A) Make a satisfactory showing of compliance with the community engagement requirement under § 435.552, including by meeting the criteria for an exception to be deemed as having demonstrated community engagement under § 435.553 or, if applicable, § 435.555, for the month(s) specified in accordance with § 435.556(a); and

(B) Make a satisfactory showing that the community engagement requirement does not apply to the individual on the basis that the individual does not meet the definition of applicable individual at § 435.551, including failure to demonstrate the individual meets the criteria for one or more of the categories of a specified excluded individual under § 435.554; and

(iv) Determine the individual's or beneficiary's potential eligibility for other insurance affordability programs in accordance with § 435.1200(e).

(e) *Prohibition on restrictions to reapplying for coverage.* An agency must not impose any restriction on an applicable individual's ability to reapply for coverage or their ability to receive coverage if determined eligible upon reapplication based on a prior denial of eligibility or disenrollment for noncompliance under this section.

(f) *Reconsideration period.* A State must reconsider eligibility consistent with § 435.916(a)(3)(iii), if an individual, who was enrolled with eligibility based on MAGI, was disenrolled for failure to submit information requested in a notice of noncompliance and submits the information during the reconsideration period described in § 435.916(a)(3)(iii).

§ 435.559 Implementation timing for the community engagement requirement.

(a) Unless granted an exemption under § 435.560, the agency must require applicable individuals, as defined at § 435.551, to comply with the requirement to demonstrate community engagement under §§ 435.552 and 435.556, or be deemed to have demonstrated community engagement under § 435.553 or, if applicable, § 435.555, as a condition of eligibility for medical assistance furnished on or after January 1, 2027.

(b) The agency may elect to implement §§ 435.550 through 435.563 before January 1, 2027, under the State plan or a demonstration project under section 1115 of the Act.

(c) For a beneficiary who is enrolled as of the State's implementation date, the agency must verify compliance with

the community engagement requirement at the applicable individual's first renewal initiated on or after the implementation date.

§ 435.560 Good faith effort exemption.

(a) *General.* CMS temporarily may exempt a State from the requirement to implement §§ 435.550 through 435.559 and 435.561 through 435.563 in accordance with § 435.559 if—

(1) A State submits a request that includes information on all of the criteria specified in paragraph (b) of this section; and

(2) CMS determines that, based on the information submitted, the State is demonstrating a good faith effort to comply with the implementing the requirements of §§ 435.550 through 435.559 and 435.561 through 435.563.

(b) *Criteria for good faith effort determination.* CMS will consider the following criteria when determining whether a State is demonstrating a good faith effort:

(1) Any actions taken by the State toward implementing the community engagement requirement;

(2) Any significant barriers to or challenges in meeting such requirements, including those related to funding, design, development, procurement, or installation of necessary systems or resources;

(3) The State's detailed plan and timeline and milestones for fully implementing the community engagements requirement; and

(4) Any exigent circumstances, such as an administrative or other emergency beyond the agency's control, impacting the State's ability to implement the community engagement requirement consistent with § 435.559.

(c) *Duration of exemption.* An exemption granted under paragraph (a) of this section shall expire no later than December 31, 2028, and may not be renewed beyond such date.

(1) CMS will approve initial good faith effort exemptions for a period not to exceed 6 months.

(2) CMS may grant one or more extensions of an exemption if the State continues to demonstrate a good faith effort toward full implementation of §§ 435.550 through 435.559 and 435.561 through 435.563.

(3) The length of any extension granted under paragraph (c)(2) of this section shall be determined by CMS based on its assessment of the State's progress and review of an updated implementation timeline and additional information submitted by the State in accordance with paragraph (d) of this section.

(4) CMS may terminate an exemption granted under paragraph (a) of this

section prior to the expiration date of such exemption, if CMS determines that the State has—

(i) Failed to comply with the reporting requirements described in paragraph (d) of this section; or

(ii) Based on the information provided pursuant to paragraph (d) of this section, failed to make a continued good faith effort toward implementing §§ 435.550 through 435.559 and 435.561 through 435.563.

(d) *Reporting requirements.* A State granted an exemption under paragraph (a) of this section must submit to CMS—

(1) A quarterly report on the State's status in achieving the milestones toward fully implementing §§ 435.550 through 435.562 and 435.564 through 435.563; and

(2) Information on specific risks or newly identified barriers or challenges to fully implementing the community engagement requirement, including the State's plan to mitigate such risks, barriers, or challenges and any additional details as requested in a form and cadence as specified by CMS.

§ 435.561 State requirements for outreach.

(a) *Outreach.* The agency must provide notice, in a manner and frequency described in this section, of the requirement to demonstrate community engagement under this subpart to individuals who are—

(1) Eligible to enroll or are enrolled under § 435.119; or

(2) Otherwise eligible to enroll or are enrolled in a demonstration project under section 1115(a)(2) of the Act that provides coverage equivalent to minimum essential coverage requirements as defined under § 435.4, and are—

(i) At least 19 and under 65 years of age;

(ii) Not pregnant;

(iii) Not entitled to or enrolled for benefits under part A of title XVIII or enrolled for benefits under part B of title XVIII; and

(iv) Not otherwise eligible to enroll under the State plan.

(b) *Frequency of outreach.* The agency must notify individuals described in paragraph (a) of this section of the requirement to demonstrate community engagement—

(1) Three months plus the number of months specified by the State under § 435.556(a)(1)—

(i) Prior to January 1, 2027, or, if applicable, prior to the State's earlier implementation date as elected by the state under § 435.559(b); or

(ii) For States that later elect to implement the eligibility group described at § 435.119, or a section 1115

demonstration project described in paragraph (a)(2) of this section, prior to the effective date of such eligibility expansion;

(2) Upon enrollment, during the period of time between the initial outreach notice and implementation of the community engagement requirement described in paragraph (b)(1) of this section; and

(3) Periodically as follows—

(i) When such individual is determined or redetermined eligible at application, at renewal described at section 1902(e)(14)(L) of the Act and § 435.916, or based on a change in circumstances;

(ii) When the State elects the short-term hardship exception under § 435.555(a);

(iii) On each occasion on which a short-term hardship exception relating to an event described in § 435.555(d)(2) becomes available to applicable individuals or the State effectuates the short-term hardship event described in § 435.555(d)(3);

(iv) When the State reduces a beneficiary's eligibility and sends the advance notice described in § 431.211 of this subchapter for:

(A) The deselection of the short-term hardship exception under § 435.555(a);

(B) The anticipated expiration of a short-term hardship event described in § 435.555(d)(2) and (3); and

(C) The loss of a beneficiary's status as a specified excluded individual under § 435.554; and

(v) Upon request by CMS, if State-reported monitoring data under § 435.562 or other information indicate a need for increased outreach or a potential compliance issue with §§ 435.550 through 435.562, consistent with § 435.562(e)(2).

(c) *Content of outreach notice.* The notice required under paragraph (a) of this section must be provided in a manner consistent with § 435.905(b) and include information on—

(1) How to comply with the requirement to demonstrate community engagement under 1902(xx) of the Act, including—

(i) An explanation of the exceptions to such requirement under § 435.553, including short-term hardship exceptions under § 435.555, if elected by the State;

(ii) Who is an applicable individual as defined at § 435.551, including an explanation of exclusions from such definition under § 435.554;

(iii) The number of months an applicable individual is required to demonstrate community engagement at renewal under § 435.556(a)(2)(i); and

(iv) How often the State will verify compliance with the community

engagement requirement between renewals if the State elects to conduct more frequent verifications consistent with § 435.556(a)(2)(ii);

(2) The consequences of noncompliance with the community engagement requirement on Medicaid eligibility and eligibility for advance payments of the premium tax credit (APTC) and the premium tax credit (PTC) used to pay for coverage through a Health Insurance Exchange; and

(3) How to report to the State any change in the individual's status that could result in the individual qualifying or no longer qualifying—

(i) For an exception under § 435.553;

(ii) For a short-term hardship exception under § 435.555, if elected by the State; or

(iii) As a specified excluded individual under § 435.554.

(d) *Modalities for delivering outreach notice.* The notice must be provided to the individual—

(1) By regular mail, or, if elected by the individual, in an electronic format consistent with § 435.918; and

(2) In one or more of the following additional modalities:

(i) The individual's electronic account;

(ii) Telephone;

(iii) Text message; or

(iv) Other commonly available electronic means.

(e) *Coordination of outreach and other notices.* The agency may—

(1) Provide the outreach notice described in this section with an eligibility determination notice described in § 435.917 or other communication from the agency to the individual.

(2) Utilize managed care organizations (MCOs), prepaid inpatient health plans (PIHPs), prepaid ambulatory health plans (PAHPs), primary care case managers (PCCMs), and PCCM entities, as defined at § 438.2 of this subchapter, to notify their enrollees of the requirement to demonstrate community engagement consistent with this section through one or more of the modalities described in paragraph (d)(2) of this section.

§ 435.562 Requirements for States to submit data for monitoring community engagement.

(a) *Basis.* This section implements section 1902(a)(6) and (a)(75) of the Act.

(b) *Definitions.* As used in this section—

(1) *Timely* means that all data for required data elements are submitted according to the cadence and not later than the deadline specified by CMS.

(2) *Complete* means that all data for required data elements are reported.

(3) *Sufficient quality* means that all data for required data elements are reported in a form and manner that adheres to specifications prescribed by CMS.

(c) *Reporting requirement.* For data about activities described in §§ 435.550 through 435.563 occurring on or after the State's implementation date under § 435.559, each State must submit to CMS the required data for the data elements described in paragraph (d) of this section to monitor enrollment, retention, and eligibility processes. Such data must be timely, complete, and of sufficient quality.

(d) *Required data elements.* States must submit data for the following categories for individuals who apply for and are receiving medical assistance, including individuals subject to the requirements of §§ 435.550 through 435.563:

(1) Enrollment totals of individuals receiving medical assistance.

(2) Application and renewal processing and timeliness, including information, if relevant, about pending applications and renewals that exceed the timeliness standards.

(3) Outcomes of determinations and redeterminations of eligibility.

(4) Population counts of individuals subject to and their compliance with the requirements of §§ 435.550 through 435.563, including their manner of compliance.

(5) Any other data specified by CMS to monitor State implementation of §§ 435.550 through 435.563.

(e) *Corrective action and additional outreach notices.* The agency may be subject to corrective action under section 1904 of the Act, additional data collection, or a requirement to send additional outreach notices under § 435.561(b)(3)(v), when—

(1) Reported data are not timely, complete, or of sufficient quality; or

(2) Reported data or other available information indicate a failure to comply substantially with §§ 435.550 through 435.562, or determination and/or redetermination outcomes indicate a need for increased outreach.

§ 435.563 Prohibition of waivers of the community engagement requirement.

(a) CMS will not approve a section 1115 demonstration project that waives, in whole or in part, the community engagement provisions of section 1902(xx) of the Act.

(b) A State implementing the community engagement provisions of section 1902(xx) of the Act through section 1115 demonstration authority must ensure compliance with each of the requirements of section 1902(xx) of the Act.

8. Section 435.907 is amended by—
 a. Removing paragraph (c)(4); and
 b. Revising paragraph (d).
 The revision reads as follows:

§ 435.907 Application.

* * * * *

(d) *Prohibition on requiring in-person interviews.* The agency may not require an in-person interview as part of the application process for a determination of eligibility using MAGI-based income. This paragraph (d) sunsets on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policy governing in-person interviews are implemented and effective on October 1, 2034, replacing the policy scheduled to sunset on that date for the period until October 1, 2034.

* * * * *

■ 9. Section 435.911 is amended by revising paragraph (c) introductory text and adding paragraph (c)(4) to read as follows:

§ 435.911 Determination of eligibility.

* * * * *

(c) For each individual who has submitted an application described in § 435.907 or whose eligibility is being renewed in accordance with § 435.916 and who meets the non-financial requirements for eligibility (or for whom the agency is providing a reasonable opportunity to verify citizenship or immigration status in accordance with § 435.956(b)), the State Medicaid agency must comply with the following—

* * * * *

(4) The provisions of this paragraph (c) sunset on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policy governing determinations of eligibility are implemented and effective on October 1, 2034, replacing the policy scheduled to sunset on that date for the period until October 1, 2034.

* * * * *

■ 10. Section 435.912 is revised to read as follows:

§ 435.912 Timely determination of eligibility.

(a) For purposes of this section—

(1) Timeliness standards refer to the maximum period of time in which every applicant is entitled to a determination of eligibility, subject to the exceptions in paragraph (e) of this section.

(2) Performance standards are overall standards for determining eligibility in an efficient and timely manner across a pool of applicants, and include standards for accuracy and consumer satisfaction, but do not include standards for an individual applicant's determination of eligibility.

(b) Consistent with guidance issued by the Secretary, the agency must establish in its State plan timeliness and performance standards for promptly and without undue delay—

(1) Determining eligibility for Medicaid for individuals who submit applications to the single State agency or its designee.

(2) Determining potential eligibility for, and transferring individuals' electronic accounts to, other insurance affordability programs pursuant to § 435.1200(e).

(3) Determining eligibility for Medicaid for individuals whose accounts are transferred from other insurance affordability programs, including at initial application as well as at a regularly-scheduled renewal or due to a change in circumstances.

(c)(1) The timeliness and performance standards adopted by the agency under paragraph (b) of this section must cover the period from the date of application or transfer from another insurance affordability program to the date the agency notifies the applicant of its decision or the date the agency transfers the individual to another insurance affordability program in accordance with § 435.1200(e) and must comply with the requirements of paragraph (c)(2) of this section, subject to additional guidance issued by the Secretary to promote accountability and consistency of high quality consumer experience among States and between insurance affordability programs.

(2) Timeliness and performance standards included in the State plan must account for—

(i) The capabilities and cost of generally available systems and technologies;

(ii) The general availability of electronic data matching and ease of connections to electronic sources of authoritative information to determine and verify eligibility;

(iii) The demonstrated performance and timeliness experience of State Medicaid, CHIP and other insurance affordability programs, as reflected in data reported to the Secretary or otherwise available; and

(iv) The needs of applicants, including applicant preferences for mode of application (such as through an internet website, telephone, mail, in-person, or other commonly available electronic means), as well as the relative complexity of adjudicating the eligibility determination based on household, income or other relevant information.

(3) Except as provided in paragraph (e) of this section, the determination of

eligibility for any applicant may not exceed—

(i) 90 days for applicants who apply for Medicaid on the basis of disability; and

(ii) 45 days for all other applicants.

(d) The agency must inform applicants of the timeliness standards adopted in accordance with this section.

(e) The agency must determine eligibility within the standards except in unusual circumstances, for example—

(1) When the agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action; or

(2) When there is an administrative or other emergency beyond the agency's control.

(3) When the agency is unable to meet the standards for applicants who are provided a notice of noncompliance to demonstrate community engagement due to the 30-calendar day period that States must provide for the individual to respond to such notice at § 435.558.

(f) The agency must document the reasons for delay in the applicant's case record.

(g) The agency must not use the time standards—

(1) As a waiting period before determining eligibility; or

(2) As a reason for denying eligibility (because it has not determined eligibility within the time standards).

(h) The provisions of this section sunset on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policies governing timeliness standards for Medicaid eligibility are implemented and effective on October 1, 2034, replacing the policies scheduled to sunset on that date.

■ 11. Section 435.916 is revised to read as follows:

§ 435.916 Periodic renewal of Medicaid eligibility.

(a) *Renewal of individuals whose Medicaid eligibility is based on modified adjusted gross income methods (MAGI).* (1) Except as provided in paragraph (d) of this section, the eligibility of Medicaid beneficiaries whose financial eligibility is determined using MAGI-based income must be renewed once every 12 months, and no more frequently than once every 12 months.

(2) Renewal on basis of information available to agency. The agency must make a redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more

current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency under §§ 435.948, 435.949, and 435.956. If the agency is able to renew eligibility based on such information, the agency must, consistent with the requirements of this subpart and part 431, subpart E of this subchapter, and notify the individual—

(i) Of the eligibility determination, and basis; and

(ii) That the individual must inform the agency, through any of the modes permitted for submission of applications under § 435.907(a), if any of the information contained in such notice is inaccurate, but that the individual is not required to sign and return such notice if all information provided on such notice is accurate.

(3) Use of a pre-populated renewal form. If the agency cannot renew eligibility in accordance with paragraph (a)(2) of this section, the agency must—

(i) Provide the individual with—

(A) A renewal form containing information, as specified by the Secretary, available to the agency that is needed to renew eligibility.

(B) At least 30 days from the date of the renewal form to respond and provide any necessary information through any of the modes of submission specified in § 435.907(a), and to sign the renewal form in a manner consistent with § 435.907(f);

(C) Notice of the agency's decision concerning the renewal of eligibility in accordance with part 431, subpart E of this subchapter;

(ii) Verify any information provided by the beneficiary in accordance with §§ 435.945 through 435.956;

(iii) Reconsider in a timely manner the eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination, or a longer period elected by the State, without requiring a new application; and

(iv) Not require an individual to complete an in-person interview as part of the renewal process.

(b) *Redetermination of individuals whose Medicaid eligibility is determined on a basis other than modified adjusted gross income.* The agency must redetermine the eligibility of Medicaid beneficiaries excepted from modified adjusted gross income under § 435.603(j), or circumstances that may change, at least every 12 months. The agency must make a redetermination of eligibility in accordance with the provisions of paragraph (a)(2) of this section, if sufficient information is

available to do so. The agency may adopt the procedures described at paragraph (a)(3) of this section for individuals whose eligibility cannot be renewed in accordance with paragraph (a)(2) of this section.

(1) The agency may consider blindness as continuing until the reviewing physician under § 435.531 determines that a beneficiary's vision has improved beyond the definition of blindness contained in the plan; and

(2) The agency may consider disability as continuing until the review team, under § 435.541, determines that a beneficiary's disability no longer meets the definition of disability contained in the plan.

(c) *Procedures for reporting changes.* The agency must have procedures designed to ensure that beneficiaries make timely and accurate reports of any change in circumstances that may affect their eligibility and that such changes may be reported through any of the modes for submission of applications described in § 435.907(a).

(d) *Agency action on information about changes.* (1) Consistent with the requirements of § 435.952, the agency must promptly redetermine eligibility between regular renewals of eligibility described in paragraphs (b) and (c) of this section whenever it receives information about a change in a beneficiary's circumstances that may affect eligibility.

(i) For renewals of Medicaid beneficiaries whose financial eligibility is determined using MAGI-based income, the agency must limit any requests for additional information from the individual to information relating to such change in circumstance.

(ii) If the agency has enough information available to it to renew eligibility with respect to all eligibility criteria, the agency may begin a new 12-month renewal period under paragraph (a) or (b) of this section.

(2) If the agency has information about anticipated changes in a beneficiary's circumstances that may affect his or her eligibility, it must redetermine eligibility at the appropriate time based on such changes.

(e) *Information requests.* The agency may request from beneficiaries only the information needed to renew eligibility. Requests for non-applicant information must be conducted in accordance with § 435.907(e).

(f) *Consideration for other bases of eligibility and other insurance affordability programs.* Determination of ineligibility and transmission of data pertaining to individuals no longer eligible for Medicaid.

(1) Prior to making a determination of ineligibility, the agency must consider all bases of eligibility, consistent with § 435.911.

(2) For individuals determined ineligible for Medicaid, the agency must determine potential eligibility for other insurance affordability programs and comply with the procedures set forth in § 435.1200(e).

(g) *Renewal form and notice format.* Any renewal form or notice must be accessible to persons who are limited English proficient and persons with disabilities, consistent with § 435.905(b).

(h) *Sunset date.* The provisions of this section sunset on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policies governing the periodic renewals of Medicaid eligibility and redeterminations based on changes in circumstances are implemented and effective on October 1, 2034, replacing the policies scheduled to sunset on that date.

§ 435.919 [Removed]

■ 12. Section 435.919 is removed.

§ 435.945 [Amended]

■ 13. Section 435.945 is amended in paragraph (j) by removing the phrase “provisions set forth in §§ 435.940 through 435.956 of this subpart” and adding in its place “provisions set forth in § 435.557 and §§ 435.940 through 435.956”.

§ 435.1200 [Amended]

■ 14. Section 435.1200 is amended in paragraph (e)(1) introductory text by removing the phrase “(regarding regularly-scheduled renewals of eligibility) or § 435.919 (regarding changes in circumstances)”.

PART 438—MANAGED CARE

■ 15. The authority citation for part 438 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 16. Section 438.58 is revised to read as follows:

§ 438.58 Conflict of interest safeguards.

(a) As a condition for contracting with MCOs, PIHPs, or PAHPs, a State must have in effect safeguards against conflict of interest on the part of State and local officers and employees and agents of the State who have responsibilities relating to the MCO, PIHP, or PAHP contracts or the enrollment processes specified in § 438.54(b). These safeguards must be at least as effective as the safeguards specified in chapter 21 of the Office of

Federal Procurement Policy Act (41 U.S.C. 2101–2107).

(b) A State may not use an MCO, PIHP, PAHP, or other contractor to determine beneficiary compliance with the community engagement requirement in part 435, subpart F of this subchapter, unless the entity is not, and has no direct or indirect financial relationship with, an MCO, PIHP, or PAHP that is responsible for providing or arranging for covered services for individuals enrolled with it under its contract with the State.

PART 457—ALLOTMENTS AND GRANTS TO STATES

- 17. The authority citation for part 457 continues to read as follows:
Authority: 42 U.S.C. 1302.
- 18. Section 457.340 is amended by revising the heading for paragraph (d) and paragraph (d)(1) to read as follows:

§ 457.340 Application for and enrollment in CHIP.

* * * *

(d) *Timely determination of eligibility.*

(1) The terms in § 435.912 of this chapter, exclusive of § 435.912(e)(3), apply equally to CHIP, except that standards for transferring electronic accounts to other insurance affordability programs are pursuant to § 457.350 and the standards for receiving applications from other insurance affordability

programs are pursuant to § 457.348. The provisions of this paragraph (d)(1) sunset on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policies governing timely determinations of CHIP eligibility are implemented and effective on October 1, 2034, replacing the policies scheduled to sunset on that date.

* * * *

§ 457.344 [Removed]

- 19. Section 457.344 is removed.
- 20. Section 457.960 is added to read as follows:

§ 457.960 Reporting changes in eligibility and redetermining eligibility.

If the State requires reporting of changes in circumstances that may affect the enrollee’s eligibility for child health assistance, the State must—

(a) Establish procedures to ensure that enrollees make timely and accurate reports of any such change; and

(b) Promptly redetermine eligibility when the State has information about these changes.

(c) This section sunsets on October 1, 2034. CMS will follow applicable rulemaking procedures to ensure that policy governing changes in circumstances and redeterminations of CHIP eligibility are implemented and effective on October 1, 2034, replacing the policy scheduled to sunset on that

date for the period until October 1, 2034.

PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

- 21. The authority citation for part 600 is revised to read as follows:
Authority: 42 U.S.C. 300gg, 1395, and 18051.
- 22. Section 600.320 is amended by revising paragraph (b) to read as follows:

§ 600.320 Determination of eligibility for and enrollment in a standard health plan.

* * * *

(b) *Timely determinations.* The terms of § 435.912 of this chapter (relating to timely determinations of eligibility under the Medicaid program) apply to eligibility determinations for enrollment in a standard health plan exclusive of § 435.912(c)(3)(i) and (e)(3). The standards established by the State must be included in the BHP Blueprint.

* * * *

Robert F. Kennedy, Jr.,
Secretary, Department of Health and Human Services.
[FR Doc. 2026–11094 Filed 6–1–26; 4:45 pm]
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Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors: Residual Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2004-0022; FRL-10654-02-OAR]

RIN 2060-AV96

National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors: Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing the residual risk and technology review (RTR) conducted for the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Hazardous Waste Combustors (HWC). Specifically, the EPA is finalizing that risks due to emissions of hazardous air pollutants (HAP) from this source category are adequately addressed by the existing standards; that the NESHAP provides an ample margin of safety to protect public health; and that no developments in practices, processes, or control technologies necessitate revision of the standards. In addition, the EPA is promulgating emission standards for hydrogen fluoride (HF) and hydrogen cyanide (HCN) emissions from major source HWC incinerators, cement kilns, solid fuel boilers, and liquid fuel boilers under Clean Air Act (CAA) sections 112(d)(2) and (3) and 112(h). These final amendments also include work practice standards under CAA section 112(h) for periods of startup, shutdown, and malfunction (SSM); new electronic reporting provisions and requirements; provisions allowing States to choose to exempt area source HWCs from certain permitting requirements; and certain typographical and technical corrections and clarifications.

DATES: This final rule is effective on June 3, 2026. The incorporation by reference of certain material listed in the rule was approved by the Director of the Federal Register as of September 8, 2020.

ADDRESSES: The EPA established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0022. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. The EPA does not place certain other material, such as copyrighted material,

on the internet; this material is publicly available only as Portable Document Format (PDF) versions and accessible only on EPA computers in the docket office reading room. The public cannot download certain databases and physical items from the docket but may request these items by contacting the docket office by telephone at (202) 566-1744. The docket office has 10 business days to respond to such requests. Except for these items, publicly available docket materials are available electronically at <https://www.regulations.gov> or on 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 Time (ET), 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 U.S. EPA, Attn: Rachel Smoak, Mail Drop: Natural Resources Division (E143-02), 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-0253; and email address: smoak.rachel@epa.gov. Individuals who are deaf or hard of hearing, as well as individuals who have speech or communication disabilities, may use a telecommunications relay service. To learn more about how to make an accessible telephone call to any of the telephone numbers shown in this preamble, please visit the web page¹ for the relay service of the Federal Communications Commission, and a list of relay services is available on their directory page.²

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this preamble, the use of “we,” “us,” or “our” refers 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:

APCD air pollution control device
AWFCO automatic waste feed cutoff
CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface

CEMS continuous emission monitoring system(s)
CISWI commercial and industrial solid waste incinerator
CFR Code of Federal Regulations
CfPT confirmatory performance test
CMAS chemical manufacturing area sources
CMS continuous monitoring system(s)
COMS continuous opacity monitoring system(s)
CPT comprehensive performance test
DRE destruction and removal efficiency
°F degrees Fahrenheit
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
GACT generally available control technology
GMCS GORE Mercury Control System
HAP hazardous air pollutants(s)
HBEL health-based emission limit
HCl hydrochloric acid
HCN hydrogen cyanide
HF hydrogen fluoride
Hg mercury
HQ hazard quotient
HWC hazardous waste combustor
ICR Information Collection Request
MACT maximum achievable control technology
MMBTU/hr million British thermal units per hour
MTEC maximum theoretical emissions concentration
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NOC Notification of Compliance
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OPL operating parameter limit
PAH polycyclic aromatic hydrocarbons
PCB polychlorinated biphenyls
PCDD/PCDF polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans
PM particulate matter
POM polycyclic organic matter
ppmv parts per million by volume
RATA relative accuracy test audit
RCRA Resource Conservation and Recovery Act
RFA Regulatory Flexibility Act
RTR risk and technology review
SDDS Shell Dioxin Destruction System
SSM startup, shutdown, and malfunction
TEQ toxic equivalency quotient
THC total hydrocarbons
TOSHI target organ-specific hazard index
UMRA Unfunded Mandates Reform Act
UPL upper prediction limit

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¹ See <https://www.fcc.gov/trs>.

² See <https://www.fcc.gov/general/trs-state-and-territories>.

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I. General Information

A. Executive Summary

The EPA promulgated the current HWC NESHAP to address emissions of HAP from hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, solid fuel-fired boilers, liquid fuel-fired boilers, and HCl production furnaces under CAA section 112 in 2005.³ This followed the vacatur⁴ of the 1999 standards⁵ and a period of regulation under a 2002 interim final rule⁶ while the EPA developed the updated HWC NESHAP. In response to multiple petitions for reconsideration, the EPA sought and received a full voluntary remand of the rule in 2009 to reexamine the HWC NESHAP.⁷

CAA section 112(f)(2) requires the EPA to review the standards initially promulgated for this source category within eight years to identify and address residual risk to human health and the environment. CAA section 112(d)(6) also requires the EPA to review and revise the standards “as necessary” at least every eight years to address developments in practices, processes, and control technologies.

The EPA conducted the required RTR and proposed those results in 2025.⁸ In the same action, the EPA withdrew a previous proposal regarding emission standards during periods of malfunction⁹ and proposed new standards for HF and HCN for HWCs with demonstrated emissions of those HAP, which had not previously been regulated by the HWC NESHAP; revisions to the SSM provisions; electronic reporting provisions; provisions regarding area source HWC title V permitting requirements; and other technical, typographical, and clarifying corrections.¹⁰

In this final rule, the EPA is finalizing the results of the RTR, determining that the risks due to HAP emissions from the HWC NESHAP are adequately addressed by the existing standards, that the HWC NESHAP provides an ample margin of safety to protect public health, and that there are no developments in practices, processes, or control technologies that warrant revisions to the standards pursuant to the technology review. The EPA is finalizing a new work practice standard for HF for HWC incinerators, numerical emission limits for HCN for HWC cement kilns, numerical emission limits

for HF and HCN for HWC solid fuel boilers, and a work practice standard for HF and numerical emission limits for HCN for HWC liquid fuel boilers. The EPA is also finalizing new work practice standards for periods of SSM; electronic reporting provisions; provisions that title V air permitting authorities may choose to exempt area sources not otherwise subject to title V air permitting requirements on a case-by-case basis; and other technical, typographical, and clarifying corrections to the HWC NESHAP.

Following consideration of comments and evaluation of additional information received on the proposed rule, the EPA is revising our assessment of the emission limits for HF and HCN for HWC cement kilns. The EPA received additional data on the emission of HF from cement kilns demonstrating that the HF emissions the EPA relied upon to propose a work practice standard for HF were artifacts of the measurement technique, not data demonstrating HF emissions from HWC cement kilns. The EPA does not currently have any credible data demonstrating that HWC cement kilns measurably emit HF. Accordingly, the EPA is not finalizing any emission standard for HF emissions from HWC cement kilns. The EPA is also revising the HCN emission limit for new source HWC cement kilns based on information about the best similar source for new cement kilns. The EPA has also made other minor revisions in response to comments.

The EPA estimates that this final rule will result in present value costs of \$2.4 million at a three percent discount rate and \$1.8 million at a seven percent discount rate over the 2027 to 2041 time frame, with equivalent annualized values of \$200,000 per year for both discount rates (in 2024 dollars). Averaged over the first three years, the EPA does not expect any affected entity to incur an annual cost of more than 0.16 percent of their revenues, and the Agency expects nine affected parent entities to have cost savings associated with this final rule.

B. Does this action apply to me?

Regulated entities. Table 1 of this preamble presents categories and entities that this action potentially regulates.

³ 70 FR 59402 (Oct. 12, 2005).

⁴ *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 872 (D.C. Cir. 2001).

⁵ 64 FR 52828 (Sept. 30, 1999).

⁶ 67 FR 6792 (Feb. 13, 2002).

⁷ *Sierra Club v. EPA*, Docket No. 05–1441 (consolidated with Docket Nos. 05–1442, 05–1443, 05–1445, 05–1449) (D.C. Cir. 2008).

⁸ 90 FR 50814 (Nov. 10, 2025).

⁹ 89 FR 59867 (July 24, 2024).

¹⁰ 90 FR 50814 (Nov. 10, 2025).

Table 1— Source Categories and NESHAP Affected by This Final Action

Source Category	NESHAP	NAICS Code ¹
Petroleum and coal products manufacturing	40 CFR part 63, subpart EEE	3241
Chemical manufacturing	40 CFR part 63, subpart EEE	325
Cement and concrete product manufacturing	40 CFR part 63, subpart EEE	3273
Other nonmetallic mineral product manufacturing	40 CFR part 63, subpart EEE	3279
Hazardous waste treatment and disposal	40 CFR part 63, subpart EEE	562211
Remediation and other waste management services	40 CFR part 63, subpart EEE	5629

¹ North American Industry Classification System.

Table 1 of this preamble, although not exhaustive, provides a guide for readers regarding entities that this final action likely affects for the source categories listed. To determine if this action affects your facility, you should examine the applicability criteria in title 40 of the Code of Federal Regulations (CFR), part 63, subpart EEE. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble. To our knowledge, State, local, and Tribal government entities do not own or operate sources that would be affected by this action.

C. What is the statutory authority for this final action?

CAA sections 112, as amended, and 502(a) provide the statutory authority for this action.¹¹ CAA section 112 establishes a multi-stage regulatory process to develop standards for emission of HAP from stationary sources. Generally, the first stage involves the EPA establishing technology-based standards that reflect the maximum achievable control technology (MACT) or an appropriate alternative.¹² The second stage involves evaluating those standards within eight years pursuant to CAA section 112(f)(2) to determine whether additional standards are needed to address remaining risk associated with HAP emissions.¹³ This second stage is commonly referred to as the “residual risk review.” In addition to the residual risk review, CAA section 112(d)(6) also requires the EPA to review the standards every eight years and “revise as necessary” taking into account “developments in practices, processes,

and control technologies.”¹⁴ This review is commonly referred to as the “technology review.” The following discussion identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements.

In the first stage of the CAA section 112 standard-setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. The HWC NESHAP regulates both major and area sources, but only the requirements for establishing emissions limitations for major sources are relevant to the present rulemaking. “Major sources” are those that emit or have the potential to emit 10 tons per year or more of a single HAP or 25 tons per year or more of any combination of HAP.¹⁵ All other sources are “area sources.”¹⁶ For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of reduction in emissions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT “floor,” which is based on emission control achieved in practice by the best performing sources. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT

standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). The EPA also considers control options that are more stringent than the floor and may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.¹⁷ Standards that are more stringent than the floor are commonly referred to as “beyond-the-floor” standards.¹⁸

In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards. Under CAA section 112(h), the EPA may adopt a work practice standard in lieu of a numerical emission standard if it is “not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant.”¹⁹

The next stage in standard-setting focuses on identifying and addressing any remaining (*i.e.*, “residual”) risk within eight years pursuant to CAA

¹⁷ *Id.* 7412(d)(2).

¹⁸ *Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000) (“Once the Agency sets statutory floors, it then determines, considering cost and the other factors listed in section 7412(d)(2), whether stricter standards are ‘achievable.’ The Agency calls such stricter requirements ‘beyond-the-floor’ standards.”).

¹⁹ 42 U.S.C. 7412(h)(1); *Sierra Club v. EPA*, 479 F.3d 875, 883–84 (D.C. Cir. 2007). The EPA may “adopt[] a method to account for measurement imprecision that has a rational basis in the correlation between increased emission values and increased testing precision.” *Nat'l Ass'n of Clean Water Agencies (NACWA) v. EPA*, 734 F.3d 1115, 1154–55 (D.C. Cir. 2013).

¹¹ 42 U.S.C. 7412, 7601(a), 7661a(a).

¹² *Id.* 7412(d)(1)–(4).

¹³ *Id.* 7412(f)(2).

¹⁴ *Id.* 7412(d)(6).

¹⁵ 42 U.S.C. 7412(a)(1).

¹⁶ *Id.* 7412(a)(2).

section 112(f)(2). The approach incorporated into the CAA and used by the EPA to evaluate residual risk and develop standards under CAA section 112(f)(2) is also a two-step approach. In the first step, the EPA determines whether risks are adequately addressed by existing standards. This determination “considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) of approximately 1 in 10 thousand.”²⁰ If risks are unacceptable, the EPA determines the emission standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emission standards provide an ample margin of safety to protect public health “in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.”²¹ The EPA promulgates emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, the EPA considers whether a more stringent standard is necessary to prevent an adverse environmental effect, taking into consideration costs, energy, safety, and other relevant factors.

CAA section 112(d)(6) separately requires the EPA to review MACT standards promulgated under CAA section 112 and revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every eight years. In conducting this review, the EPA is not required to recalculate the MACT floors that were established in earlier rulemakings.²² In *Louisiana Environmental Action Network (LEAN) v. EPA*, the D.C. Circuit held that the EPA must address previously unregulated HAP known to be emitted from a major source category as part of

its periodic review under CAA section 112(d)(6).²³

CAA section 112(d)(6) and relevant case law provide the EPA with flexibility to consider additional relevant factors other than those enumerated in CAA section 112(d)(6) when deciding whether revisions to existing standards are “necessary.” The D.C. Circuit has held that the CAA section 112(d)(6) requirement to periodically review and revise CAA section 112 emission standards “as necessary” is not limited to the consideration of “developments in practices, processes and control technologies.”²⁴ Rather, “the operative standard is ‘revise as necessary,’ with the parenthetical pointing to a non-exhaustive list of considerations.”²⁵ The Supreme Court also emphasized in *Michigan v. EPA* that unless the statute provides otherwise, broad terms such as “necessary” direct the relevant agency to consider all relevant factors, including cost.²⁶ That decision is particularly relevant here because the Court was interpreting a provision of CAA section 112 that instructs the Administrator to determine whether it is “appropriate and necessary” to regulate HAP emissions from electric utility steam generating units.²⁷ Thus, under relevant case law, when the EPA is deciding whether it is “necessary” to revise standards pursuant to CAA section 112(d)(6), the Agency considers the costs of any developments in practices, processes, and control technologies.

The EPA is also required to specify relevant test methods, best practices, procedures, or protocols and recordkeeping requirements for standards promulgated under CAA section 112. Finally, CAA section 502(d)(1) requires each State to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA’s implementing regulations at 40 CFR part 70 (“title V”). Major stationary sources of air pollution and certain other non-major sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan.

D. Where can I get a copy of this document and other related information?

In addition to the docket, an electronic copy of this final action is available on the internet. A brief summary of this rule is available at <https://www.regulations.gov>, Docket ID No. EPA-HQ-OAR-2004-0022. Following signature by the EPA Administrator, the EPA will post a copy of this rule at: <https://www.epa.gov/hazardous-waste-combustors-national-emission-standards-hazardous>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at <https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous>. This information includes an overview of the RTR program and links to project websites for the RTR source categories.

E. Judicial Review and Administrative Reconsideration

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 August 3, 2026. CAA section 307(b)(2) prohibits a party from challenging this final rule separately in any civil or criminal proceedings brought by the EPA for enforcement.

CAA section 307(d)(7)(B) further provides that only an objection to a rule or procedure that was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also requires the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, 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

²⁰ 54 FR 38045 (Sept. 14, 1989). Although defined as “maximum individual risk,” MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

²¹ *Id.*

²² See *Ass’n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667 (D.C. Cir. 2013); *NRDC v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008).

²³ 955 F.3d 1088 (D.C. Cir. 2020).

²⁴ *LEAN*, 955 F.3d at 1097.

²⁵ *Id.*; see also *Nat’l Ass’n for Surface Finishing v. EPA*, 795 F.3d 1, 11 (D.C. Cir. 2015); *Ass’n of Battery Recyclers*, 716 F.3d at 673–74.

²⁶ 576 U.S. 743, 752–53 (2015).

²⁷ See *id.* (interpreting 42 U.S.C. 7412(n)(1)(A)).

Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

F. Severability

This final rule contains several discrete components, which the EPA views as severable as a practical matter—*i.e.*, they are functionally independent and will operate in practice independently of the other components. These discrete components are detailed in sections III.A through III.E of this preamble and the technical memoranda available in the docket.²⁸ For example, the outcome of the risk review, the outcome of the technology review, the final emission limits for HF and HCN for each type of HWC, and the final work practice standards for periods of SSM generally function independently of one another and would not be impacted if a reviewing court were to vacate one or more of the other final provisions. In addition, as this final rule revises an existing NESHAP, the EPA notes that if a reviewing court were to vacate one or more of the standards finalized here, the affected standards will revert to those present in the 2005 HWC NESHAP as revised in 2005, 2006, and 2008.²⁹

II. Background

A. What is the HWC NESHAP source category and how does the HWC NESHAP regulate HAP emissions from the source category?

HWCs are units that combust hazardous waste and they can be located at many types of facilities including those listed in table 1 of this preamble. The source category covered by the HWC NESHAP currently includes approximately 160 HWCs located at approximately 90 facilities in the United States. HWCs are incinerators, cement kilns, lightweight aggregate kilns, boilers, or HCl production furnaces that combust hazardous waste for waste reduction, thermal energy recovery, and/or production of a product. Hazardous waste is defined under the Resource Conservation and Recovery Act (RCRA), which establishes a comprehensive regulatory structure overseeing the treatment, storage, and disposal of hazardous waste.³⁰ In 2023, approximately 32.2 million tons of hazardous waste were generated in the United States, all of which must be

treated or disposed of in a manner that protects human health and the environment.³¹ Hazardous waste incineration provided that manner of disposal for approximately 1.1 million tons of that hazardous waste, and energy recovery in units like hazardous waste burning boilers accounted for an additional 1.4 million tons.³²

The key HAP that the HWC NESHAP regulates include polychlorinated dibenzodioxins and furans (PCDD/PCDF); mercury (Hg); cadmium and lead as semi-volatile metals; arsenic, beryllium, and chromium as low-volatile metals; antimony, cobalt, manganese, nickel, and selenium as non-enumerated metal HAP; HCl and chlorine gas; and other hydrocarbon HAP, including polychlorinated biphenyls (PCB) and polycyclic aromatic hydrocarbons (PAH). The HWC NESHAP also includes several other emission limits used as surrogate standards to regulate emissions of other HAP such as a carbon monoxide (CO) or total hydrocarbon (THC) limit associated with demonstrating good combustion practices, a destruction and removal efficiency (DRE) standard also for demonstrating good combustion practices, and a particulate matter (PM) emission limit for some subcategories.³³

The EPA originally promulgated the HWC NESHAP, codified at 40 CFR part 63, subpart EEE, in 1999.³⁴ It regulated incinerators, cement kilns, and lightweight aggregate kilns that burned hazardous waste. These standards were vacated in 2001³⁵ and replaced with interim standards in 2002.³⁶ The EPA promulgated replacement standards for hazardous waste incinerators, cement kilns, and lightweight aggregate kilns and first-time standards for hazardous waste solid fuel boilers, liquid fuel boilers, and HCl production furnaces in 2005.³⁷ In response to multiple petitions for reconsideration, the EPA sought and received a voluntary remand of the rule in 2009 to reexamine the HWC NESHAP.³⁸

³¹ U.S. Environmental Protection Agency. (Last updated Dec. 30, 2024). Biennial Report Summary: <https://rcrapublic.epa.gov/rcra-hwip/trends-and-analysis/details/4>.

³² U.S. Environmental Protection Agency. (Last updated July 10, 2025). Biennial Report Management Methods: <https://rcrapublic.epa.gov/rcra-hwip/trends-and-analysis/details/3>.

³³ For more information about the HWC NESHAP, see the notice of proposed rulemaking associated with this final action at 90 FR 50814 (Nov. 10, 2025).

³⁴ 64 FR 52828 (Sept. 30, 1999).

³⁵ *Cement Kiln Recycling Coal*, 255 F.3d at 872.

³⁶ 67 FR 6792 (Feb. 13, 2002).

³⁷ 70 FR 59402 (Oct. 12, 2005).

³⁸ *Sierra Club v. EPA*, Docket No. 05–1441 (consolidated with Docket Nos. 05–1442, 05–1443, 05–1445, 05–1449) (D.C. Cir.).

In October 2022, Earthjustice filed an action in the U.S. District Court for the District of Columbia to compel the EPA to review and revise the HWC NESHAP under CAA sections 112(d)(6) and (f)(2) (*i.e.*, complete the RTR). In December 2024, the district court issued an order requiring that the EPA sign the final RTR rule for this source category by December 31, 2025.³⁹ In response to the EPA's request for an extension of time, the district court subsequently extended the deadline from December 31, 2025, to May 29, 2026.⁴⁰ The EPA is finalizing this action in response to the court order.⁴¹

B. What changes did we propose for the HWC NESHAP source category in our November 10, 2025, proposal?

On November 10, 2025, the EPA published a proposed rule in the **Federal Register** for the HWC NESHAP, 40 CFR part 63, subpart EEE, that discussed the results of the RTR and proposed actions reflecting those results. Specifically, the EPA proposed: that the results of the risk review demonstrated that no revisions to the existing standards were required to address residual risk; that no revisions to the existing standards were necessary based on developments in practices, processes, or control technologies under the technology review; numeric emission limits for HF and HCN for major source HWC solid fuel boilers; a work practice standard for HF for major source HWC incinerators; a work practice standard for HF and numeric emission limits for HCN for major source HWC cement kilns; a work practice standard for HF and numeric emission limits for HCN for major source liquid fuel boilers; work practice standards for periods of SSM; electronic reporting provisions; allowing title V air

³⁹ Order, *Blue Ridge Envtl. Def. League v. Regan*, 22–cv–3134 (APM), at 4 (D.D.C. Dec. 12, 2024).

⁴⁰ Order, *Blue Ridge Envtl. Def. League v. Regan*, 22–cv–3134 (APM), at 3–4 (D.D.C. Dec. 23, 2025).

⁴¹ In finalizing standards for previously unregulated HAP as part of this rulemaking, the EPA is exercising its authority under CAA section 112(d)(6) to revise the standards as necessary. Nothing in this final rule should be taken as endorsing the language in the district court's order discussing the EPA's obligations under CAA section 112 or the *LEAN* decision. The D.C. Circuit has exclusive jurisdiction to review final action taken by the EPA to promulgate standards pursuant to CAA section 112, including, when appropriate, to interpret relevant statutory provisions, see 42 U.S.C. 7607(b)(1), while district courts have jurisdiction, subject to standing, venue, and other requirements, to order the performance of "any act or duty under [the CAA] which is not discretionary with the Administrator," *see id.* 7604(a). In context, the district court's order was addressing the parties' arguments about the appropriate remedy, that is, the appropriate timeline for completing the RTR, for plaintiffs' claim that the EPA had failed to act by the statutory deadline.

²⁸ See Docket ID. No. EPA–HQ–OAR–2004–0022.

²⁹ See 70 FR 59402 (Oct. 12, 2005); 70 FR 75042 (Dec. 19, 2005); 71 FR 62388 (Oct. 25, 2006); 73 FR 18970 (Apr. 8, 2008); 73 FR 64068 (Oct. 28, 2008).

³⁰ 42 U.S.C. 6901–6992k.

permitting authorities to choose to exempt area sources from the requirement to obtain a title V permit if such area sources are not otherwise subject to title V air permitting requirements; and other items and technical corrections.⁴²

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the HWC NESHAP source category. This action also finalizes other changes to the NESHAP, including emission limits and work practice standards for HF and HCN from major source HWC incinerators, cement kilns, solid fuel boilers, and liquid fuel boilers; work practice standards for periods of SSM; new electronic reporting provisions and requirements; provisions allowing title V air permitting authorities to choose to exempt area source HWCs from the requirement to have a title V air permit if such area sources are not otherwise subject to title V air permitting requirements; and minor corrections and clarifications to a number of other rule provisions. This action also reflects several changes to the November 2025 proposal in consideration of comments received during the public comment period, as described in section IV of this preamble.

A. What are the final rule amendments based on the risk review for the HWC NESHAP source category?

The EPA is finalizing, as proposed, that pursuant to CAA section 112(f), risks from this source category are adequately addressed by the existing standards and therefore acceptable, the existing standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. The EPA is not promulgating any additional control requirements pursuant to CAA section 112(f)(2) but instead reaffirming the existing standards.⁴³

Sections IV.A.2 through IV.A.4 of this preamble provide a more in-depth analysis of the decision to finalize that the risks from the source category are acceptable and provide an ample margin of safety pursuant to CAA section 112(f).

B. What are the final rule amendments based on the technology review for the HWC NESHAP source category?

The EPA is finalizing, as proposed, that pursuant to CAA section 112(d)(6), there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Sections IV.B.2 through IV.B.4 of this preamble provide a more in-depth analysis of the decision not to revise the existing MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) and 112(h) for the HWC NESHAP source category?

Consistent with our authority to review and revise the HWC NESHAP and with the proposed rule,⁴⁴ the EPA is finalizing regulatory provisions to address previously unregulated HAP emissions within the source category in this rule. Based on a review of available information, the EPA is finalizing the following pursuant to CAA sections 112(d)(2), (d)(3), and (h)(1):⁴⁵

- Numeric emission limits for HF and HCN for major source HWC solid fuel boilers.
- Work practice standard for HF for major source HWC incinerators.
- Numeric emission limit for HCN for major source HWC cement kilns.
- Work practice standard for HF for all major source HWC liquid fuel boilers and numeric emission limits for HCN for some major source HWC liquid fuel boilers.

The EPA presents the results and final decisions based on the analyses performed pursuant to CAA sections 112(d)(2), (d)(3), and (h)(1) below, with separate discussion for each subcategory and HAP. All emission standards discussed here regulate only HWCs at facilities that are major sources of HAP. Sections IV.C.2 through IV.C.4 of this preamble provide a more in-depth discussion of the HF and HCN emission limitations.

1. Solid Fuel Boilers

a. Hydrogen Fluoride

The EPA is promulgating standards for HF emissions from major source HWC solid fuel boilers pursuant to CAA sections 112(d)(2) and (3). The EPA is promulgating a limit at the MACT floor of 6.2 parts per million by volume (ppmv) HF, dry basis and corrected to seven percent oxygen, for both existing

and new solid fuel boilers.⁴⁶ The EPA is finalizing these standards as proposed.

The EPA is finalizing as proposed that existing sources must comply with the HF emission limits for solid fuel boilers within three years after June 3, 2026, and must conduct an initial compliance test demonstrating compliance no later than six months after the compliance date using EPA Methods 26A or 320. For affected facilities that commence construction or reconstruction after November 10, 2025, owners or operators must comply with all requirements of the subpart, including the HF emission limits, no later than the effective date of the final rule or upon startup, whichever is later, and must demonstrate compliance no later than six months after the compliance date using the same methods. All sources must subsequently demonstrate compliance once every five years during the comprehensive performance test (CPT).

b. Hydrogen Cyanide

The EPA is promulgating standards for HCN emissions from major source HWC solid fuel boilers pursuant to CAA sections 112(d)(2) and (3). The EPA is promulgating a limit at the MACT floor of 5.0 ppmv HCN, dry basis and corrected to seven percent oxygen, for both existing and new solid fuel boilers.⁴⁷ The EPA is finalizing these standards as proposed.

The EPA is finalizing as proposed that existing sources must comply with the HCN emission limits for solid fuel boilers within three years after June 3, 2026, and must conduct an initial compliance test demonstrating compliance no later than six months after the compliance date using EPA Method 320 or, if there are entrained water droplets in the flue gas, an alternative test method submitted and approved by the Administrator.⁴⁸ For affected facilities that commence construction or reconstruction after November 10, 2025, owners or operators must comply with all requirements of the subpart, including the HCN emission limits, no later than the effective date of the final rule or upon startup, whichever is later, and must demonstrate compliance no later than six months after the compliance date

⁴² For more information about what was proposed, see the notice of proposed rulemaking associated with this final rule at 90 FR 50814 (Nov. 10, 2025).

⁴³ The D.C. Circuit upheld this approach to CAA section 112(f)(2) in *NRDC*: "If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking." 529 F.3d at 1083.

⁴⁴ See 90 FR 50814 (Nov. 10, 2025).

⁴⁵ See *LEAN*, 955 F.3d at 1091–99.

⁴⁶ New source standards apply to major source HWC solid fuel boilers for which construction or reconstruction commences after November 10, 2025.

⁴⁷ New source standards apply to major source HWC solid fuel boilers for which construction or reconstruction commences after November 10, 2025.

⁴⁸ 40 CFR 63.7(f).

using the same methods. Sources must subsequently demonstrate compliance once every five years during the CPT.

2. Incinerators

a. Hydrogen Fluoride

The EPA is promulgating a work practice standard with multiple compliance options for HF emissions from major source HWC incinerators pursuant to CAA section 112(h) because it is not feasible to prescribe or enforce a standard of performance.⁴⁹ The same work practice standard is applicable to both new and existing sources.⁵⁰ In response to comments, the EPA is finalizing the requirement that one automatic waste feed cutoff (AWFCO)-interlocked operating parameter limit (OPL) other than chlorine feed rate, rather than two, is appropriate for complying with the work practice standard.

The work practice standard requires a source to comply with their choice of one of three options. The options of the work practice standard are as follows:

Option 1: If a source actively controls HCl emissions and the source has at least one AWFCO-interlocked OPL other than chlorine feed rate to control HCl, then the source may comply with the HCl and chlorine gas OPL or limits and indicate in the CPT report and Notification of Compliance (NOC) that they are demonstrating compliance with the HF work practice standard by complying with the HCl and chlorine gas OPL requirements.

Option 2: If a facility does not feed any material with detectable levels of fluorine to the source, then the source may certify in the CPT report that no fluorine is fed and indicate in the CPT report and NOC that they are demonstrating compliance with the HF work practice standard through the certification.

Option 3: If a facility feeds fluorine to a source and the source has no active HCl control with at least one AWFCO-interlocked OPL other than chlorine feed rate to control HCl emissions (Option 1), then the facility must monitor and record the total fluorine fed to the unit as a 12-hour rolling average. If at any point the feed rate suggests that HF emissions may exceed the solid fuel

boiler existing source emission limit for HF (6.2 ppmv HF as calculated according to the HWC NESHAP's maximum theoretical emissions concentration (MTEC) procedure), then the source must complete a one-time HF emissions test during the next CPT at the maximum recorded fluorine feed rate and include the test results in the CPT report. The source must include the comparison of the HF MTEC to the solid fuel boiler existing source emission limit for HF in the CPT plan.

The EPA is finalizing as proposed that existing sources must comply with the HF work practice standard for incinerators within three years after June 3, 2026, and must demonstrate compliance through a certification, test plan, or initial compliance test no later than six months after the compliance date. Emission testing for HF must use EPA Methods 26A or 320. For affected facilities that commence construction or reconstruction after November 10, 2025, owners or operators must comply with all requirements of the subpart, including the HF work practice standard, no later than the effective date of the final rule or upon startup, whichever is later, and must demonstrate compliance no later than six months after the compliance date. Sources must subsequently demonstrate compliance once every five years during the CPT.

b. Hydrogen Cyanide

The EPA did not propose and is not finalizing standards for HCN emissions from major source HWC incinerators because the EPA does not have credible data indicating that major source HWC incinerators measurably emit HCN.⁵¹

3. Cement Kilns

a. Hydrogen Fluoride

As explained in sections IV.C.2 through IV.C.4 of this preamble, the EPA is not finalizing standards for HF emissions from major source HWC cement kilns because the Agency does not have credible data indicating that HWC cement kilns measurably emit HF.

b. Hydrogen Cyanide

The EPA is promulgating standards for HCN emissions from major source HWC cement kilns pursuant to CAA sections 112(d)(2) and (3). For existing sources, the EPA is finalizing as proposed a limit at the MACT floor of 56 ppmv HCN, dry basis and corrected to seven percent oxygen. As explained in sections IV.C.2 through IV.C.4 of this preamble, for new sources the EPA is finalizing for new sources a limit at the

revised MACT floor of 5.5 ppmv HCN, dry basis and corrected to seven percent oxygen.⁵²

The EPA is finalizing as proposed that existing sources must comply with the HCN emission limits for cement kilns within three years after June 3, 2026, and must demonstrate compliance through an initial compliance test no later than six months after the compliance date using EPA Method 320 or, if there are entrained water droplets in the flue gas, an alternative test method submitted and approved by the Administrator.⁵³ For affected facilities that commence construction or reconstruction after June 3, 2026, owners or operators must comply with all requirements of the subpart, including the HCN emission limits, no later than the effective date of the final rule or upon startup, whichever is later, and must demonstrate compliance no later than six months after the compliance date using the same methods. Sources must subsequently demonstrate compliance once every five years during the CPT using EPA Method 320 or, if there are entrained water droplets in the flue gas, an alternative test method submitted and approved by the Administrator.⁵⁴

4. Liquid Fuel Boilers

a. Hydrogen Fluoride

The EPA is promulgating a work practice standard with multiple compliance options for HF emissions from major source HWC liquid fuel boilers pursuant to CAA section 112(h) because it is not feasible to prescribe or enforce a standard of performance.⁵⁵ This is the same work practice standard with multiple compliance options described in section III.C.2.a of this preamble for incinerators. The same work practice standard is applicable to both new and existing sources.⁵⁶ The EPA is finalizing these standards as proposed.

The EPA is finalizing as proposed that existing sources must comply with the HF work practice standard for liquid

⁵² New source standards apply to major source HWC cement kilns for which construction or reconstruction commences after November 10, 2025.

⁵³ 40 CFR 63.7(f).

⁵⁴ *Id.*

⁵⁵ See CAA section 112(h)(2) for more information about the circumstances under which prescribing or enforcing a standard of performance is not reasonable and the notice of proposed rulemaking associated with this final action for discussion of why it is not feasible in this circumstance (90 FR 50814 (Nov. 10, 2025)).

⁵⁶ New source standards apply to major source HWC liquid fuel boilers for which construction or reconstruction commences after November 10, 2025.

⁴⁹ See CAA section 112(h)(2) for more information about the circumstances under which prescribing or enforcing a standard of performance is not reasonable and the notice of proposed rulemaking associated with this final action for discussion of why it is not feasible in this circumstance (90 FR 50814 (Nov. 10, 2025)).

⁵⁰ New source standards apply to major source HWC incinerators for which construction or reconstruction commences after November 10, 2025.

⁵¹ 90 FR 50814 (Nov. 10, 2025).

fuel boilers within three years after the publication of the final rule and that demonstration through a certification, test plan, or initial compliance test would occur no later than six months after the compliance date. For affected facilities that commence construction or reconstruction after June 3, 2026, owners or operators must comply with all requirements of the subpart, including the HF work practice standard, no later than the effective date of the final rule or upon startup, whichever is later, and must demonstrate compliance no later than six months after the compliance date. Sources must subsequently demonstrate compliance once every five years during the CPT. Emission testing for HF must use EPA Methods 26A or 320.

b. Hydrogen Cyanide

The EPA is promulgating standards for HCN emissions from two subcategories of major source HWC liquid fuel boilers pursuant to CAA sections 112(d)(2) and (3). The EPA is finalizing as proposed the subcategorization of liquid fuel boilers by size, under CAA section 112(d)(1), for the purposes of the HCN emission standard.⁵⁷ The size categories are as follows: capacity less than or equal to 50 million british thermal units per hour (MMBTU/hr), capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr, and capacity greater than 250 MMBTU/hr.

The EPA did not propose and is not finalizing standards for HCN emissions from major source HWC liquid fuel boilers with a capacity that is less than or equal to 50 MMBTU/hr because the Agency does not have credible data indicating that major source HWC incinerators measurably emit HCN.

For existing major source HWC liquid fuel boilers with capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr, the EPA is finalizing as proposed a limit at the MACT floor of 2.7 ppmv HCN, dry basis and corrected to seven percent oxygen. For new major source HWC liquid fuel boilers with capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr, the EPA is finalizing as proposed a limit at the MACT floor of 1.2 ppmv HCN, dry basis and corrected to seven percent oxygen.⁵⁸

For existing major source HWC liquid fuel boilers with capacity greater than 250 MMBTU/hr, the EPA is finalizing as proposed a limit at the MACT floor of 3.4 ppmv HCN, dry basis and corrected to seven percent oxygen. For new major source HWC liquid fuel boilers with capacity greater than 250 MMBTU/hr, the EPA is finalizing as proposed a limit at the MACT floor of 1.1 ppmv HCN, dry basis and corrected to seven percent oxygen.

The EPA is finalizing as proposed that existing sources must comply with the HCN emission limits for liquid fuel boilers within three years after June 3, 2026, and must demonstrate compliance through an initial compliance test no later than six months after the compliance date using EPA Method 320 or, if there are entrained water droplets in the flue gas, an alternative test method submitted and approved by the Administrator.⁵⁹ For affected facilities that commence construction or reconstruction after June 3, 2026, owners or operators must comply with all requirements of the subpart, including the HCN emission limits, no later than the effective date of the final rule or upon startup, whichever is later, and must demonstrate compliance no later than six months after the compliance date using the same methods. Sources must subsequently demonstrate compliance once every five years during the CPT using EPA Method 320 or, if there are entrained water droplets in the flue gas, an alternative test method submitted and approved by the Administrator.⁶⁰

5. HCl Production Furnaces

a. Hydrogen Fluoride

The EPA did not propose and is not finalizing standards for HF emissions from major source HWC HCl production furnaces because the Agency does not have credible data indicating that major source HWC HCl production furnaces measurably emit HF.⁶¹

b. Hydrogen Cyanide

The EPA did not propose and is not finalizing standards for HCN emissions from major source HWC HCl production furnaces because the Agency does not have credible data indicating that major source HWC HCl production furnaces measurably emit HCN.⁶²

6. Lightweight Aggregate Kilns

The EPA did not propose and is not finalizing standards for HF or HCN

emissions from lightweight aggregate kilns because the EPA has no credible emissions data on which to base decisions about whether or how to regulate such emissions.⁶³ If an HWC lightweight aggregate kiln begins operating after the promulgation of this final rule, the EPA expects to collect emissions testing data from them and address potential emissions in a subsequent action.

D. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?

Consistent with *Sierra Club v. EPA*⁶⁴ and the proposed rule,⁶⁵ the EPA is finalizing revisions to the SSM provisions of the NESHAP to ensure that HWCs meet MACT standards at all times when controlling HAP emissions. The EPA is promulgating work practice standards for periods of SSM. These work practice standards include the following: (1) a clean fuel requirement for periods of startup and shutdown; (2) a requirement to follow an approved SSM plan during periods of SSM; and (3) the AWFCO system requirement. The EPA is also finalizing as proposed various other changes to modify recordkeeping and reporting requirements as a result of the SSM provisions.

The EPA is finalizing a work practice standard for periods of startup and shutdown. This work practice standard is the combination of firing prescribed supplemental clean fuels during periods of startup and shutdown and operating in accordance with an approved SSM plan during periods of startup and shutdown. The EPA is also finalizing a work practice standard for periods of malfunction. This work practice standard is the combination of AWFCO system requirements and operating in accordance with an approved SSM plan during periods of malfunction. Because the SSM plan also includes a description of potential causes of malfunctions that may result in significant releases of HAP and actions the source takes to minimize the frequency and severity of those malfunctions, the source must also comply with any requirements to minimize the frequency and severity of malfunctions prescribed in the SSM plan for periods of normal operation.

The EPA is also finalizing that owners or operators must submit SSM plans to the Administrator for approval within 180 days of the effective date of this rule or upon initial startup, whichever is

⁵⁷ 42 U.S.C. 7412(d)(1); see also *U.S. Sugar Corp. v. EPA* 830 F.3d 579, 593–94 (D.C. Cir. 2016) (“[T]he EPA has discretion to differentiate among classes, types, and sizes of sources within a category or subcategory.” (internal citations omitted)).

⁵⁸ New source standards apply to major source HWC liquid fuel boilers for which construction or reconstruction commences after November 10, 2025.

⁵⁹ 40 CFR 63.7(f).

⁶⁰ *Id.*

⁶¹ 90 FR 50814 (Nov. 10, 2025).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 551 F.3d 1019 (D.C. Cir. 2008).

⁶⁵ 90 FR 50814 (Nov. 10, 2025).

later, and that sources must begin complying with the SSM plan immediately upon submittal. While the EPA expects SSM plans to be reviewed within no more than 90 days of submittal, commenters pointed out, and the Agency agrees, that owners or operators of HWCs can only control the submittal date, not the approval date of an SSM plan, and so the EPA considers that it is more appropriate to tie the compliance timeline to the action that HWC owners or operators can control.⁶⁶ In response to comments, the EPA is also finalizing that if changes are made to the SSM plan as a result of the approval process, sources must begin complying with the revised SSM plan upon notification of approval.

As discussed in sections IV.D.2 through IV.D.4 of this preamble, the EPA is finalizing revised definitions of startup, shutdown, and supplemental fuel in response to comments received on the proposal.⁶⁷ Commenters requested, and the EPA is finalizing, separate definitions of startup and shutdown for different types of HWCs and is clarifying that transitioning from operating under the requirements of an otherwise applicable requirement constitutes a period of startup.⁶⁸ The definitions of startup are:

- For incinerators, startup begins with the firing of supplemental fuel in the combustion chamber or with transitioning from a period of shutdown. All air pollution control devices (APCDs) must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the HWC. Startup ends once the system has stabilized but no later than 15 minutes after either hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown or any waste material that is not supplemental fuel is fed into the HWC, whichever occurs first.⁶⁹

- For cement kilns and lightweight aggregate kilns, startup begins when a kiln either begins firing supplemental fuel or transitions from a period of shutdown. All APCDs must be in operation as expeditiously as possible and prior to the introduction of kiln feed or any waste material that is not

supplemental fuel into the kiln. Startup ends 120 minutes after the continuous introduction of kiln feed, when the feed rate exceeds 60 percent of the kiln design limitation rate, or 15 minutes after hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown is fed into the HWC, whichever occurs first.⁷⁰ Cement kilns may fire traditional fuels as defined in 40 CFR 241.2 once the HWC achieves 1200 degrees Fahrenheit (°F) measured at a location that best represents, as practicable, the bulk gas temperature in the combustion zone and all APCDs are operational.

- For solid fuel boilers and liquid fuel boilers, startup begins with either the first-ever firing of supplemental fuel in a boiler for the purpose of supplying useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or producing electricity or the firing of fuel in a boiler for any purpose after a shutdown event. All APCDs must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the boiler. Startup ends at the earliest of the following: four hours after when the boiler supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes; the boiler produces electricity; or 15 minutes after either hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown or any waste material that is not supplemental fuel is fed into the boiler.⁷¹

- For HCl production furnaces, startup begins when the HCl production furnace either begins firing supplemental fuel or transitions from a period of shutdown. All APCDs must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the HCl production furnace. Startup ends either 120 minutes after the continuous introduction of materials intended to produce HCl to the HCl production furnace or 15 minutes after either hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown or any waste material that is not supplemental fuel is fed into the HCl

production furnace, whichever is earlier.⁷²

- Notwithstanding the previous definitions, transitioning from an otherwise applicable standard initiates a period of startup lasting no more than 15 minutes in duration.

The definitions of shutdown are:

- For incinerators, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and the feed of non-hazardous waste materials to the combustion chamber is cut off. Shutdown ends when fire is extinguished in the combustion chamber, the incinerator enters another mode of operation, or when a startup is initiated.

- For cement kilns and lightweight aggregate kilns, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and kiln feed is halted. Shutdown ends when continuous kiln rotation ceases, the kiln enters another mode of operation, or when a startup is initiated.

- For solid fuel boilers and liquid fuel boilers, shutdown begins when the boiler no longer supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler, whichever is earlier, and when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time. Shutdown ends when the boiler no longer supplies useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is being combusted in the boiler, the boiler enters another mode of operation, or when startup is initiated.

- For HCl production furnaces, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and raw material feed to the HCl production furnace is halted. Shutdown ends when the HCl production furnace flame is extinguished, the HCl production furnace enters another mode of operation, or when a startup is initiated.

The EPA defines supplemental fuel as one or a combination of the following fuels: natural gas, synthetic natural gas,

⁶⁶ See 40 CFR 63.1206(c)(2)(ii)(B) for information about SSM plan review.

⁶⁷ See the revised 40 CFR 63.1206(c)(10) and (c)(11).

⁶⁸ See 40 CFR 63.1206(b)(1)(ii) for information about operating according to an otherwise applicable requirement.

⁶⁹ See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup and shutdown.

⁷⁰ See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup and shutdown.

⁷¹ See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup and shutdown.

⁷² See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup and shutdown.

propane, other gas 1 fuels, distillate oil, syngas, ultra-low sulfur diesel, kerosene, hydrogen, refinery gas, liquefied petroleum gas, and any other fuel approved in the SSM plan. For solid fuel boilers, the definition of supplemental fuel includes coal. The EPA also defines other gas 1 fuels as gaseous fuel that is not natural gas, refinery gas, or a hazardous waste and does not exceed a maximum Hg concentration of 40 micrograms per cubic meter of gas. The SSM plan must specify the basis for determining that any gas qualifies as other gas 1 fuel.

The EPA is also finalizing as proposed changes in recordkeeping requirements that are associated with periods of SSM. In accordance with this final action, sources must retain in the operating record the start date, start time, and duration (hours) of each startup, shutdown, or malfunction of affected process, air pollution control, and monitoring equipment and whether the source followed the SSM plan. For periods of SSM when the SSM plan was not followed, sources must record and retain a list of the affected sources or equipment; actions taken to minimize emissions in accordance with 40 CFR 63.6(e)(1)(i) and 40 CFR 63.8(c)(1)(i); any corrective actions taken to return the affected unit to its normal or usual manner of operation; whether the failure occurred during a period of SSM; an estimate of the quantity of each regulated pollutant emitted; and a description of the method used to estimate the emissions.

The EPA is finalizing as proposed changes to the HWC NESHAP General Provisions table related to periods of SSM by revising the applicability of 40 CFR 63.10. The following general provisions remain applicable to the HWC NESHAP: 40 CFR 63.10(a), (b)(1), (b)(2)(iii), (b)(2)(v)–(xiv), (b)(3), (c), (d)(1), (d)(3), (d)(4), (e), and (f). The following general provisions are no longer applicable to the HWC NESHAP: 40 CFR 63.10(b)(2)(i) and (ii), (b)(2)(iv), and (d)(2).

Sections IV.D.2 through IV.D.4 of this preamble provide a more in-depth analysis of the EPA's decisions regarding work practice standards for periods of SSM.

E. What other changes have been made to the NESHAP?

The EPA is promulgating other changes to the HWC NESHAP. Regarding electronic reporting, the EPA is finalizing as proposed the requirement to electronically report performance test results, NOC reports, and certain other submissions. Regarding technical corrections, the

EPA is finalizing, as proposed, the removal of the requirement that CO is kept between the average and maximum reported values during the confirmatory performance test (CfPT) and the never-implemented requirement that sources install and operate PM continuous emission monitoring systems (PM CEMS). Regarding clarifications, the EPA is finalizing the following issues as proposed: explicitly allowing incorporation by reference of OPLs determined during the CPT in air permits, removing references that were incorrectly incorporated by reference and have since expired, clarifying the demonstration of compliance timeframe for new standards by removing an outdated demonstration of compliance timeline for the 2005 HWC NESHAP, and other minor editorial corrections. The EPA is also clarifying that a relative accuracy test audit (RATA) must be performed within 180 days before every CPT. The EPA is also finalizing that title V air permitting authorities including but not limited to States may choose to exempt area sources not otherwise subject to title V air permitting requirements from the requirement to obtain a title V permit on a case-by-case basis. Section IV.E of this preamble provides a more in-depth analysis of the EPA's decisions regarding these revisions.

EPA Method 0023A is referenced in the amendatory text of this document and was previously approved for § 63.1208.

F. What are the effective and compliance dates of the standards?

The revisions to the HWC NESHAP standards promulgated in this action are effective on June 3, 2026. The EPA is finalizing the timeline for compliance with the HF and HCN limits as proposed. Existing sources must comply with the HF and HCN emission limits as applicable by June 3, 2029, which is three years after publication of this final rule. For existing sources, CAA section 112(i) provides that the compliance date for standards promulgated under CAA section 112(d) shall be as expeditious as practicable, but no later than three years after the effective date of the standard.⁷³ As the EPA explained in the proposal, and as some commenters agreed, owners and operators need at least three years

to implement the requirements that the EPA is finalizing under CAA section 112(d)(2), (3), and (6).⁷⁴ For example, sources that complete performance testing to demonstrate compliance with the HF or HCN emission limits must determine if they need to make any modifications to comply with the limits, implement any changes, submit a performance test plan at least one year before testing commences, get the performance test plan approved, and schedule and conduct a performance test to demonstrate compliance. Owners or operators may also require modifications to their title V, other air, or RCRA permits if they modify operations of their HWC to comply with the HF or HCN emission limits. As provided in CAA section 112(i) and 5 U.S.C. 801(3), all new affected sources, which are for the purposes of the HF and HCN standards sources constructed or reconstructed after November 10, 2025, must comply with all requirements under CAA sections 112(d)(2), (3), (6), and 112(h) immediately upon the effective date, which is June 3, 2026, or upon startup, whichever is later. Both new and existing sources must commence performance testing to demonstrate compliance with the HF and HCN emission limits no later than six months after their respective compliance dates. The EPA provided additional rationale for these compliance dates in the preamble to the proposed rule.⁷⁵ The EPA is clarifying in this final rule that the Administrator may grant an extension of the compliance timeline, as appropriate.⁷⁶

The EPA is promulgating new electronic reporting requirements for all sources, and the Agency is finalizing all electronic reporting compliance dates as proposed. Owners and operators must submit notifications of intent to comply, eligibility demonstrations, periodic SSM reports, and compliance progress reports electronically through a PDF upload in Compliance and Emissions Data Reporting Interface (CEDRI) beginning 60 days from the effective date of the final rule, which is August 3, 2026. As the EPA is not changing the contents and structure of these reports, but only the manner of submission, the Agency believes that 60 days is sufficient time for facilities to enroll in

⁷³ *U.S. Sugar Corp. v. EPA*, 113 F.4th 984, 995 (D.C. Cir. 2024) (CAA section 112(i)(3)(A) "permits EPA to establish a delayed 'compliance date' for any existing-source emission standard, which may fall up to 3 years after the effective date of such standard"); see also *Ass'n of Battery Recyclers*, 716 F.3d at 672 ("Section 112(i)(3)'s three-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112].").

⁷⁴ See chapter 1 of U.S. EPA, *Summary of Public Comments and Responses for the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors*, available in the docket for this rulemaking.

⁷⁵ 90 FR 50814, 50851 (Nov. 10, 2025).

⁷⁶ See 40 CFR 63.6(i) and 40 CFR 63.1213 for more information about an extension of the compliance timeline.

CEDRI if not already enrolled and to submit these reports electronically. Owners and operators must submit performance tests and performance evaluations including RATA electronically using the Electronic Reporting Tool (ERT) beginning 90 days after the effective date of the final rule, which is September 1, 2026. In the EPA's experience, since the ERT has been available for use for over a decade and stack testing firms are well acquainted with its use, 90 days is sufficient time to begin electronic reporting using the ERT. Owners and operators must submit the NOC and the excess emissions and continuous monitoring system (CMS) performance reports and summary reports electronically in CEDRI using a spreadsheet template beginning one year from the effective date of the final rule, which is June 3, 2027, or one year from the date the EPA makes the template available on the CEDRI homepage, whichever is later. The EPA believes that one year is necessary to ensure that facilities can become acquainted with the spreadsheet template and begin entering data into the new format.

The EPA is promulgating new work practice standards for periods of SSM, which are described in sections III.D and IV.D of this preamble. In response to comments, the EPA is finalizing that all facilities must submit the SSM plan to the Administrator for approval either postmarked within 180 days of June 3, 2026, or upon initial startup, whichever is later. For clarity, November 30, 2026, is 180 days after the date of this rule's effective date. The EPA anticipates that most facilities are already operating in accordance with their SSM plan. Based on the EPA's experience and comments received from affected entities, the 180-day compliance period is a reasonable timeframe for facilities to review their SSM plans, revise them, if required, based on the contents of this action, and submit them for approval. All facilities already implement the AWFCO system requirement of the SSM work practice

standards and so HWC owners and operators do not require additional time for compliance.

The EPA is finalizing as proposed that all other revisions to the HWC NESHAP would become applicable on the effective date of the final rule, which is June 3, 2026, or as otherwise indicated in the regulatory text. These revisions are technical corrections, clarifications, and deregulatory actions that do not require demonstrations of compliance or immediate action on the part of regulated entities.

IV. What is the rationale for our final decisions and amendments for the HWC NESHAP source category?

For each issue, this section provides a description of what the EPA proposed and what the Agency is finalizing, the Agency's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses are in the document titled *Summary of Public Comments and Responses for the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors* ("Comment Response Document"), which is in the docket for this rulemaking.⁷⁷

A. Residual Risk Review for the HWC NESHAP Source Category

1. What did we propose pursuant to CAA section 112(f) for the HWC NESHAP source category?

On November 10, 2025, the EPA proposed that risks posed by HAP emissions from HWCs are adequately addressed by existing standards and acceptable, that the current NESHAP provides an ample margin of safety to protect public health, and that additional standards are not necessary to prevent an adverse environmental effect.⁷⁸ The EPA's residual risk review

found that the estimated cancer risks were below the presumptive limit of acceptability and that the noncancer risk results indicate a minimal likelihood of adverse noncancer health effects due to HAP emissions from HWCs. The EPA based the proposed decision on ample margin of safety on a weighing of relevant factors, including the risk posed by HWCs, the costs and effectiveness of additional controls to further reduce risk, and uncertainties and conservative assumptions in the emission rates used in estimating risk.

In the proposed review, the EPA evaluated risk based on estimates of current actual HAP emissions from HWCs, maximum allowable HAP emissions from HWCs, and facility-wide risk based on reported actual HAP emissions to characterize the risk from HWCs in the context of whole facility risk. The EPA modeled several metrics for risk due to HAP inhalation in the proposed review, including cancer risk to the individual most exposed, total cancer incidence, population within 50 kilometers of an HWC facility exposed to cancer risk greater than or equal to one in one million, modeled chronic noncancer target organ-specific hazard index (TOSHI), and maximum modeled acute noncancer hazard quotient (HQ). The EPA also evaluated in the proposed review multipathway human health risks including the cancer risk for the highest exposed individual, the maximum chronic noncancer HQ for persistent and bioaccumulative HAP, and if the Agency expected an adverse environmental effect as a result of HAP emissions from HWCs based on the results of an environmental risk screening analysis. Table 2 of this preamble presents a summary of the results of the proposed risk analysis. The EPA estimates that no people will be at an increased risk of cancer greater than or equal to 100-in-1 million based on source category actual or allowable emissions.

⁷⁷ See Docket ID. No. EPA-HQ-OAR-2004-0022.

⁷⁸ 90 FR 50814 (Nov. 10, 2025).

Table 2—HWC Source Category Inhalation Risk Assessment Results Based on Actual and Allowable Emissions

Risk Assessment	Number of Facilities	Maximum Individual Cancer Risk (-in-1 million) ¹	Estimated Population at Increased Risk of Cancer ≥ 1 -in-1 million	Estimated Annual Cancer Incidence (cases per year)	Maximum Chronic Noncancer TOSHI	Refined Maximum Screening Acute Noncancer HQ ²	Multipathway Screening Assessment ²
HWC Source Category – Actual Emissions	92	9	540,000	0.07	0.3 (respiratory)	2 (REL, arsenic compounds)	
HWC Source Category – Allowable Emissions	92	100	12,100,000	0.9	1 (respiratory)	---	---
Facility-wide	92	200	6,400,000	0.4	3 (respiratory)	---	---

¹ Maximum individual excess lifetime cancer risk due to HAP emissions.

² “---” indicates that the EPA did not perform the specified assessment.

³ The EPA does not expect an adverse environmental effect.

The EPA also considered the uncertainty associated with the proposed risk assessment. Some of the major uncertainties in the proposed risk assessment were associated with the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships.⁷⁹ Considering all of the health risk information, including the uncertainties, the EPA proposed to conclude that the risks for this source category under the current NESHAP provisions are acceptable.

As part of the ample margin of safety analysis performed for the proposal, the EPA evaluated additional potential technologies for controlling emissions to further reduce risk from HWCs, taking into consideration costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors.

The EPA evaluated the installation of a Shell Dioxin Destruction System (SDDS) for control of PCDD/PCDF in the

proposal. The EPA estimated in the proposal that emissions reductions of PCDD/PCDF due to SDDS installation would have no impact on the cancer maximum individual risk or the maximum noncancer TOSHI, a minimal impact on the cancer incidence, and little impact on the number of people exposed to cancer risks greater than or equal to one, but could potentially lower the cancer risks that the EPA estimated in the multipathway risk screening. The EPA did not propose revisions based on this control scenario pursuant to CAA section 112(f) because of the relatively high capital and annualized costs compared to relatively low reductions in cancer risks and emissions reductions.

The EPA similarly evaluated the installation of a GORE Mercury Control System (GMCS) for control of Hg in the proposal. The EPA estimated in the proposal that the emission reductions due to GMCS installation would have no impact on the cancer maximum individual risk, maximum TOSHI, cancer incidence, or number of people exposed to cancer risk levels of greater than or equal to one in one million but could potentially lower the cancer risks estimated in the multipathway risk screening. Like the SDDS, the EPA did

not propose revisions based on this control scenario pursuant to CAA section 112(f) because of the relatively high capital and annualized costs compared to relatively low reductions in cancer risk and emissions reductions.

Based on the EPA's weighing of all the relevant factors presented in the risk analyses for the HWC NESHAP and all of the other information discussed earlier in this section, the Agency proposed to conclude that the current standards provide an ample margin of safety to protect public health. Therefore, the EPA did not propose any changes to the HWC NESHAP in order to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect.

2. How did the risk review for the HWC NESHAP source category change since proposal?

The EPA did not make any changes to the risk review in this final rule and is finalizing the residual risk assessment as proposed.

3. What key comments did we receive on the risk review, and what are our responses?

The EPA received comments in support of and against the proposed risk

⁷⁹ See the preamble to the proposed rule at 90 FR 50830 (Nov. 10, 2025), section III.C.8, and the memorandum *Residual Risk Assessment for the Hazardous Waste Combustor Source Category in Support of the Risk and Technology Review 2025 Proposed Rule*, which is available in the docket for this rulemaking.

review. Commenters generally discussed the statutory requirements for the residual risk review, the methodology used to conduct the residual risk review, and the EPA's conclusions concerning the residual risk review. This section provides a summary of and response to key comments received regarding the statutory requirements for the residual risk review. Comment summaries and the EPA's responses for additional issues raised regarding the residual risk review for the HWC NESHAP are in the Comment Response Document, which is available in the docket for this rulemaking.

Comment: Two commenters asserted that the D.C. Circuit previously affirmed the EPA's interpretation of CAA section 112(f)(2) in *NRDC v. EPA*⁸⁰ under the second step of the *Chevron* framework and that, per *Loper Bright*, the Agency's interpretations must now reflect the best reading of the statute.⁸¹ The commenters stated that the proposed rule does not reflect the best reading of the statute because CAA section 112(f)(2)(A) requires the EPA to promulgate risk-based standards to reduce the maximum individual lifetime cancer risk to less than one in one million, which they assert the Agency has not done. The commenters further argued that the EPA's interpretation of CAA section 112(f)(2)(B), which they characterized as a savings provision, makes CAA section 112(f)(2)(A) meaningless because the maximum individual cancer risk for the HWC source category would remain above one in one million. Additionally, the EPA's interpretation allows for readopting standards that have "already been promulgated," which is contrary to language contained in CAA section 112(f)(2)(A). One commenter further asserted that since the EPA has not promulgated any standards under CAA section 112(f) for this source category, it is in violation of the best reading of the statute.

Response: The EPA disagrees with the commenters' assertion that the best reading of CAA section 112(f)(2) requires the EPA to promulgate risk-based standards to reduce the maximum individual lifetime cancer risk to less than one in one million. As described in the preamble to the notice of proposed rulemaking,⁸² CAA section 112(f)(2)(B) expressly preserves the EPA's use of the two-step approach for developing

standards to address any residual risk and the Agency's interpretation of "ample margin of safety" developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* ("Benzene NESHAP").⁸³ Specifically, CAA section 112(f)(2)(B) states that nothing in CAA section 112(f)(2)(A) or in any other provision of CAA section 112 shall be construed as affecting or applying to the Administrator's interpretation of CAA section 112 as set forth in the Benzene NESHAP final rule.⁸⁴ The commenters cite language in CAA section 112(f)(2)(A), which is subject to the plain language of CAA section 112(f)(2)(B). The best interpretation of CAA section 112(f)(2)(B) indicates that the Administrator's interpretation of a residual risk review as set forth in the Benzene NESHAP should be used for the residual risk review conducted by the EPA for the HWC source category. The EPA does not agree that CAA section 112(f)(2)(A) is best read as compelling the Agency to promulgate standards pursuant to subsection (f)(2) where, as here, the residual risk is acceptable and there is an ample margin of safety.

The EPA further disagrees that the D.C. Circuit precedents rejecting commenters' argument are no longer valid under *Loper Bright*. The D.C. Circuit has rejected the commenters' alternative reading of CAA section 112(f)(2) on multiple occasions, and the court's reasoning makes clear that the EPA's longstanding position is at least the better reading of the statute. In any event, the Supreme Court noted in *Loper Bright* that it did "not call into question prior cases that relied on the *Chevron* framework."⁸⁵

The EPA also disagrees with the commenters' assertion that the Agency is not promulgating standards pursuant to CAA section 112(f)(2). As described in the preamble to the proposed rule, the EPA completed the residual risk review pursuant to CAA section 112(f)(2), proposed to determine that the risks are acceptable with an ample margin of safety under the statutory authority of CAA section 112(f)(2), and is finalizing that determination under the same authority. As previously discussed, CAA section 112(f)(2)(B) dictates that the Administrator may continue to use the interpretation set

forth in the Benzene NESHAP for the residual risk review conducted pursuant to CAA section 112(f)(2). In the Benzene NESHAP, the Administrator determined that existing levels of control provided an ample margin of safety for ethylbenzene/styrene process vents and benzene equipment leaks and so the Administrator did not promulgate a new standard for those processes, instead drawing a conclusion that additional standards were not warranted for those processes.⁸⁶ The conclusion that no new standards were warranted and so no new standards were promulgated in the Benzene NESHAP combined with CAA section 112(f)(2)(B) leads the EPA to determine that the best plain language reading of CAA section 112(f)(2) allows for the Administrator to affirm or readopt existing standards for the HWC source category under CAA section 112(f)(2).⁸⁷

4. What is the rationale for our final approach and final decisions for the risk review?

The EPA's residual risk review focused on whether risks due to HAP emissions from HWCs are acceptable and if the standards provide an ample margin of safety to protect public health. The EPA considered multiple measures of health risk, including cancer risks and incidence rates, the presence of non-cancer health effects due to chronic or acute exposure, the potential for an adverse environmental effect, and the uncertainties of the risk assessment. Based on consideration of all of the health risk information, factors, results, and uncertainties discussed in section IV.A.1 of this preamble and in the proposal, the EPA concludes that the risks due to HAP emissions from the HWC NESHAP source category are acceptable.⁸⁸ Furthermore, based on the analyses described in the proposal and elsewhere in this preamble, including the evaluation of the costs and effectiveness of potential controls to reduce emissions and risks, the EPA concludes that the HWC NESHAP provides an ample margin of safety to protect public health. Finally, based on our evaluation of environmental risks, the EPA concludes that more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, the EPA is not promulgating any additional control requirements pursuant to CAA section 112(f)(2) but

⁸⁰ 529 F.3d 1077.

⁸¹ *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

⁸² See 90 FR 50814 sections II.A, III.A, III.C, IV.B, and IV.C (Nov. 10, 2025).

⁸³ See 54 FR 38044 (Sept. 14, 1989).

⁸⁴ 42 U.S.C. 7412(f)(2)(B).

⁸⁵ 603 U.S. at 412.

⁸⁶ See 54 FR 38044 (Sept. 14, 1989).

⁸⁷ *NRDC*, 529 F.3d at 1083 ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.")

⁸⁸ 90 FR 50814 (Nov. 10, 2025).

instead reaffirming the existing standards.⁸⁹

B. Technology Review for the HWC NESHAP Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the HWC NESHAP source category?

The EPA's technology review under CAA section 112(d)(6) focused on the identification and evaluation of potential developments in practices, processes, and control technologies that have occurred since the promulgation of the HWC NESHAP in 2005. The EPA reviewed various sources of information to identify any such developments and found that since 2005, two new control technologies have been employed in the HWC NESHAP source category on one incinerator, the SDDS for control of PCDD/PCDF and the GMCS for control of Hg. Based on an evaluation of the capital cost, annualized cost, potential emission reductions, and HAP cost effectiveness, the EPA proposed not to consider either the SDDS or the GMCS a cost-effective technology to further reduce HAP emissions from sources subject to the HWC NESHAP.

In summary, the EPA did not identify any additional relevant cost-effective developments in technologies, practices, or processes since promulgation of the HWC NESHAP in 2005 to further reduce HAP emissions. Therefore, the EPA did not propose any changes to the MACT standards in this action as a result of our technology review under CAA section 112(d)(6).⁹⁰

2. How did the technology review for the HWC NESHAP source category change since proposal?

The EPA did not make any changes to the technology review in this final rule and is finalizing the technology review as proposed.⁹¹ The EPA provided one additional scenario to estimate the cost-effectiveness of the SDDS at the average rate of HWC PCDD/PCDF emissions, which is available in the document titled *Clean Air Act Section 112(d)(6) Technology Review for the Hazardous*

Waste Combustor Source Category in the docket for this rulemaking.

3. What key comments did we receive on the technology review, and what are our responses?

The EPA received comments in support of and against the proposed technology review results. Commenters generally discussed the criteria used to evaluate potential developments, the developments evaluated, and the scope of the technology review. This section provides a summary of and response to key comments received regarding the EPA's evaluation criteria for the technology review for the HWC NESHAP. Comment summaries and the EPA's responses for additional issues raised regarding the technology review for the HWC NESHAP are in the Comment Response Document, which is available in the docket for this rulemaking.

Comment: A commenter disagreed with both the proposed technology review's calculation of cost-effectiveness for new HAP control technologies and the conclusion that there would be high cost and low potential emissions reductions for the identified pollution control technologies. The commenter was concerned about the social and economic harm caused by exposure to toxic chemicals on human health, including families dealing with radiation and chemotherapy treatments, impacts on child development, reproductive harm, and funeral costs. The commenter asserted that "petrochemical polluters" can easily absorb the costs from more stringent standards.

Response: The EPA disagrees with the commenter's assertion that the Agency's calculations of emissions reduction, cost, and cost-effectiveness in the technology review were inappropriate. As described in the preamble for the proposed rule, the EPA based its technology review decisions on the criteria described in CAA section 112(d)(6), that is, to review and revise the standards as necessary taking into account developments in practices, processes, and control technologies.⁹² The EPA's decision on whether it is "necessary" to revise the HWC NESHAP emission standards was based on cost, cost-effectiveness, technical feasibility, energy implications, non-air environmental impacts, and emission

reductions associated with the potential application of each development.⁹³

The EPA estimated that the SDDS could reduce emissions of PCDD/PCDF by between 7.66 and 211 milligrams of PCDD/PCDF toxic equivalency quotient (TEQ) per year per unit, with the average reduction on the low end of the range.⁹⁴ Because the EPA does not expect an adverse environmental effect resulting from HAP emissions from HWCs, as described in the environmental risk screening results, the EPA also does not expect a positive non-air environmental effect from these modest emission reductions of PCDD/PCDF.⁹⁵ The EPA also estimated a total capital investment cost of \$1,776,000 and a total annualized cost of \$299,000 per year (2024\$) per unit. This results in an annualized cost-effectiveness of between \$1.4 million and \$39 million (2024\$) per gram of PCDD/PCDF TEQ emission.⁹⁶ Given the modest emission reductions, lack of non-air environmental effects, high cost of installation, and lack of cost-effectiveness, the EPA is determining that the SDDS does not constitute a development that makes it necessary to revise the HWC NESHAP emission limits.

The EPA estimated that the GMCS could reduce emissions of Hg by approximately 13 pounds of Hg per year per unit.⁹⁷ Because the EPA does not expect an adverse environmental effect resulting from HAP emissions from HWCs, as described in the environmental risk screening results, the EPA also does not expect a positive non-air environmental effect from these modest emission reductions of Hg.⁹⁸ The EPA also estimated a total capital investment cost of \$4,143,000 and a total annualized cost of \$804,000 per year (2024\$) per unit. This results in an annualized cost-effectiveness of \$62,000

⁹³ See 90 FR 50814 (Nov. 10, 2025) section IV.D and Document ID No. EPA-HQ-OAR-2004-0022-0720 entitled *Clean Air Act Section 112(d)(6) Technology Review for the Hazardous Waste Combustor Source Category* for more information about the analyses conducted for the technology review.

⁹⁴ See the document entitled *Clean Air Act Section 112(d)(6) Technology Review for the Hazardous Waste Combustor Source Category Final Rule*, which is available in the docket for this rulemaking.

⁹⁵ See 90 FR 50814 (Nov. 10, 2025) section IV.B.4 for discussion of ample margin of safety.

⁹⁶ See the document entitled *Clean Air Act Section 112(d)(6) Technology Review for the Hazardous Waste Combustor Source Category Final Rule*, which is available in the docket for this rulemaking.

⁹⁷ *Id.*

⁹⁸ See 90 FR 50814 (Nov. 10, 2025) section IV.B.4 for discussion of ample margin of safety.

⁸⁹ The D.C. Circuit upheld this approach to CAA section 112(f)(2) in NRDC: "If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking." 529 F.3d at 1083.

⁹⁰ See section IV.D of the proposed rule (90 FR 50814 (Nov. 10, 2025)) and the memorandum *Clean Air Act Section 112(d)(6) Technology Review for the Hazardous Waste Combustor Source Category*, which is available in the docket for this rulemaking, for a more detailed discussion of the EPA's findings.

⁹¹ 90 FR 50814 (Nov. 10, 2025).

⁹² See 90 FR 50814 (Nov. 10, 2025) section III.B for more information about what factors the EPA considers in the technology review.

(2024\$) per pound of Hg emission.⁹⁹ Given the modest emission reductions, lack of non-air environmental effects, high cost of installation, and lack of cost-effectiveness, the EPA is determining that the GMCS does not constitute a development that makes it necessary to revise the HWC NESHAP emission limits.

4. What is the rationale for our final approach for the technology review?

The EPA's technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the EPA promulgated the 2005 HWC NESHAP. In the proposal, the EPA identified two potential developments but proposed that they did not necessitate a change in the HWC NESHAP standards. During the public comment period, the EPA received several comments on the Agency's proposed determinations for the technology review. The comments and the EPA's specific responses and rationale for the Agency's final decisions are in section IV.B.3 of this preamble and in the Comment Response Document, which is in the docket for this rulemaking.

No information presented by commenters has led the EPA to change the Agency's proposed determination under CAA section 112(d)(6). For the reasons explained in the proposed rule and in this final rule preamble, the EPA is finalizing that there are no developments in practices, processes, or control technologies to further reduce HAP emissions that warrant revisions to the standards.¹⁰⁰ Consequently, the EPA is not promulgating any new or revised standards in this action for the HWC NESHAP as a result of our technology review under CAA section 112(d)(6).

C. Amendments Pursuant to CAA Sections 112(d)(2) and (3) and 112(h) for the HWC NESHAP Source Category

1. What did we propose pursuant to CAA sections 112(d)(2) and (3) and 112(h) for the HWC NESHAP source category?

On November 10, 2025, the EPA proposed emission standards for HF and HCN pursuant to CAA sections 112(d)(2), (d)(3), and (h)(1) for major source HWC solid fuel boilers, incinerators, cement kilns, and liquid

fuel boilers. For existing and new major source solid fuel boilers, the EPA proposed a MACT floor emission limit of 6.2 ppmv HF, dry basis and corrected to seven percent oxygen. The EPA proposed that existing sources must comply with the HF emission limit within three years after publication of the final rule, and that new sources must comply with the HF emission limits no later than the effective date of the final rule or upon startup, whichever is later. For both existing and new sources, the EPA proposed that owners or operators must demonstrate compliance with this limit through an initial compliance test using EPA Methods 26A or 320 occurring no later than six months after the applicable compliance date.¹⁰¹ The EPA also proposed that subsequent performance testing would be required once every five years during the CPT using the same methods.

For existing and new major source HWC incinerators, cement kilns, and liquid fuel boilers, the EPA proposed a work practice standard for HF emissions with multiple compliance options. The EPA proposed that a source would have a choice of complying with only one of the three following options:

- *Option 1:* If a source actively controls HCl emissions and the source has at least two AWFCO-interlocked OPLs other than chlorine feed rate to control HCl, then the facility must comply with the HCl and chlorine gas OPLs and indicate in the CPT report and NOC that compliance is demonstrated by complying with the HCl and chlorine gas OPLs.

- *Option 2:* If a facility does not feed any material with detectable levels of fluorine to the source, then the facility must certify in the CPT report that no fluorine is fed and indicate in the CPT report and NOC that compliance is demonstrated through the certification.

- *Option 3:* If a facility feeds fluorine to a source and the source has no active HCl control with at least two AWFCO-interlocked OPLs other than chlorine feed rate to control HCl emissions, then the facility must monitor and record the total fluorine fed to the unit as a 12-hour rolling average. If at any point the feed rate suggests that HF emissions may exceed the solid fuel boiler existing source emission limit for HF (as calculated according to the HWC NESHAP's MTEC procedure), then the source would complete a one-time HF emissions test using EPA Methods 26A or 320 during the next CPT at the

maximum recorded fluorine feed rate and include the test results in the CPT report. The demonstration that HF MTEC does not exceed the solid fuel boiler existing source emission limit for HF would be included in the CPT plan.

The EPA proposed that existing sources must comply with the work practice standard for HF within three years after publication of the final rule, and that new sources must comply with the work practice standard for HF no later than the effective date of the final rule or upon startup, whichever is later. For both existing and new sources, owners or operators must demonstrate compliance with this work practice through a certification, test plan, or initial compliance test occurring no later than six months after the applicable compliance date. The EPA also proposed to require subsequent demonstration of compliance once every five years during the CPT.

The EPA also proposed emission standards for HCN pursuant to CAA sections 112(d)(2) and (d)(3) for major source HWC solid fuel boilers, cement kilns, liquid fuel boilers with capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr, and liquid fuel boilers with capacity greater than 250 MMBTU/hr. The EPA did not propose emission standards for HCN for major source HWC incinerators, liquid fuel boilers with capacity less than or equal to 50 MMBTU/hr, HCl production furnaces, or lightweight aggregate kilns.

For existing and new major source HWC solid fuel boilers, the EPA proposed a MACT floor emission limit of 5.0 ppmv HCN. For existing major source HWC cement kilns, the EPA proposed a MACT floor emission limit of 56 ppmv HCN. For new major source HWC cement kilns, the EPA proposed a MACT floor emission limit of 1.8 ppmv HCN. For existing major source HWC liquid fuel boilers with capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr, the EPA proposed a MACT floor emission limit of 2.7 ppmv. For new major source HWC liquid fuel boilers with capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr, the EPA proposed a MACT floor emission limit of 1.2 ppmv HCN. For existing major source HWC liquid fuel boilers with capacity greater than 250 MMBTU/hr, the EPA proposed a MACT floor emission limit of 3.4 ppmv HCN. For new major source HWC liquid fuel boilers with capacity greater than 250 MMBTU/hr, the EPA proposed a MACT floor emission limit of 1.1 ppmv HCN. All proposed emission limits are on a dry basis and corrected to seven percent oxygen.

⁹⁹ See the document entitled *Clean Air Act Section 112(d)(6) Technology Review for the Hazardous Waste Combustor Source Category Final Rule*, which is available in the docket for this rulemaking.

¹⁰⁰ For more information, see the preamble to the proposed rule, 90 FR 50814 (Nov. 10, 2025), and section IV.B.1 of this preamble.

¹⁰¹ New sources are affected facilities that commence construction or reconstruction after November 10, 2025.

For all subcategories with proposed limits, the EPA proposed that existing sources must comply with the applicable HCN emission limit within three years after publication of the final rule, and that new sources must comply with the HCN emission limits no later than the effective date of the final rule or upon startup, whichever is later. For both existing and new sources, the EPA proposed that owners or operators must demonstrate compliance with this limit through an initial compliance test occurring no later than six months after the applicable compliance date using EPA Method 320 or, if there are entrained water droplets in the flue gas, an alternative test method submitted and approved by the Administrator.¹⁰² The EPA also proposed that subsequent performance testing would be required once every five years during the CPT using the same methods.¹⁰³

2. How did the revisions pursuant to CAA sections 112(d)(2) and (3) and 112(h) for the HWC NESHP source category change since proposal?

The EPA is finalizing as proposed the numeric emission limits for HF and HCN for solid fuel boilers and the numeric emission limits for HCN for liquid fuel boilers with capacity greater than 50 MMBTU/hr but less than or equal to 250 MMBTU/hr and liquid fuel boilers with capacity greater than 250 MMBTU/hr.¹⁰⁴ The EPA is finalizing the proposed work practice standard for HF for incinerators and liquid fuel boilers with one minor revision in response to comment. Specifically, sources must have one AWFCO-interlocked OPL other than chlorine feed rate to control HCl to use Option 1 of the work practice standard. For cement kilns, in response to information submitted by commenters, the EPA is finalizing a revised numeric emission limit for HCN. Further, the EPA is not finalizing the work practice standard for HF for cement kilns. In addition, the EPA is clarifying that the Administrator may extend the timeline for compliance with these standards.¹⁰⁵

¹⁰² See 40 CFR 63.7(f) for information about alternative test methods. New sources are affected facilities that commence construction or reconstruction after November 10, 2025.

¹⁰³ Section IV.A of the preamble to the proposed rule contains a complete discussion of the EPA's proposed requirements for HWC sources under CAA sections 112(d)(2), (3) and 112(h). 90 FR 50814 (Nov. 10, 2025).

¹⁰⁴ 90 FR 50814 (Nov. 10, 2025).

¹⁰⁵ See CAA section 112(i)(3)(B) and (i)(5), 40 CFR 63.6(i), and 40 CFR 63.1213.

3. What key comments did we receive on the proposed revisions pursuant to CAA sections 112(d)(2) and (3) and 112(h), and what are our responses?

This section provides summaries of and responses to key comments received regarding the EPA's proposed emission standards for HF and HCN. The comments are organized as: (1) the EPA's beyond-the-floor evaluation methodology, (2) HF work practice standard, (3) HF emissions from cement kilns, (4) HCN emission limits for cement kilns, and (5) health-based emission limits (HBELs). Comment summaries and the EPA's responses for additional issues raised regarding the revisions pursuant to CAA sections 112(d)(2) and (3) and 112(h) for the HWC NESHP are in the Comment Response Document, which is available in the docket for this rulemaking.

a. The EPA's Beyond-the-Floor Evaluation Methodology

Comment: One commenter stated that the EPA did not establish emission limits or evaluate potential beyond-the-floor options for HF for incinerators, cement kilns, liquid fuel boilers, HCl production furnaces or lightweight aggregate kilns, which according to the commenter encompasses 157 out of 164 sources in the HWC category. The commenter also argued that the EPA did not evaluate beyond-the-floor controls for HCN emissions at incinerators, HCl production furnaces, and lightweight aggregate kilns, which according to the commenter encompasses 81 out of 164 sources in the HWC category. The commenter noted that there is a "self-created lack of data," but that the EPA can still determine whether there are additional controls that should be implemented, and that the EPA must consider what beyond-the-floor controls are available for these sources.

Response: The EPA did not propose and, as such, is not finalizing numeric emission limits for HF emissions from HWC incinerators, cement kilns, lightweight aggregate kilns, liquid fuel boilers, and HCl production furnaces and for HCN emissions from incinerators, lightweight aggregate kilns, and HCl production furnaces.¹⁰⁶ Thus, the commenter's count of sources appears to be a combination of subcategories the EPA did not propose to establish emission limits or evaluate beyond-the-floor options for because of no demonstrated emissions of HF or HCN and subcategories that the EPA proposed to regulate through a work practice standard. The EPA disagrees

that the Agency must consider beyond-the-floor standards where we are not setting emission limits.¹⁰⁷

The EPA collected emissions data regarding emissions of HCN from HWC incinerators and HCl production furnaces. The emissions data indicated in all test runs for both subcategories that HCN is not emitted from HWC incinerators and HCl production furnaces.¹⁰⁸ Under CAA section 112(d)(1), the EPA is required to set emissions standards for major source categories and subcategories that emit HAP.¹⁰⁹ Under the EPA's historic approach to standard setting, the first step requires the establishment of the MACT standard developed under CAA section 112(d)(3). In the second step, which is after establishing the MACT standard, the EPA then determines whether to set more stringent standards that control emissions beyond-the-floor considering criteria and methods contained in CAA section 112(d)(2) (*i.e.*, cost, non-air quality health and environmental impacts, and energy requirements).¹¹⁰ The EPA has no obligation or statutory authority to establish emissions limitations for HAP that are not emitted from a source category and as such the EPA is also under no obligation to undertake a beyond-the-floor analysis under CAA section 112(d)(2).

As previously explained, the EPA made a reasonable attempt to collect emissions data where the Agency had reason to believe that a type of HWC could emit a given HAP. At proposal, the EPA did not have any credible emissions data regarding HF emissions from lightweight aggregate kilns and HCl production furnaces and HCN emissions from lightweight aggregate kilns.¹¹¹ Therefore, the EPA did not propose MACT standards for HF emissions from HCl production furnaces. Additionally, the EPA did not propose MACT standards for HF and

¹⁰⁷ See NACWA, 734 F.3d at 1157 (noting that "Congress gave EPA broad discretion in considering whether to go beyond-the-floor").

¹⁰⁸ For discussion about the EPA's emissions data collection for HCN from these sources, see section 3.2.2 of the Comment Response Document, which is available in the docket for this rulemaking.

¹⁰⁹ 42 U.S.C. 7412(d)(1).

¹¹⁰ 42 U.S.C. 7412(d)(2)-(3); Nat'l Lime Ass'n, 233 F.3d at 634 ("Once the Agency sets statutory floors, it then determines, considering cost and the other factors listed in section 7412(d)(2), whether stricter standards are 'achievable.' The Agency calls such stricter requirements 'beyond-the-floor' standards.").

¹¹¹ For discussion about the EPA's emissions data collection for HCl production furnaces and lightweight aggregate kilns, see sections 3.2.3 and 3.2.4, respectively, of the Comment Response Document, which is available in the docket for this rulemaking.

¹⁰⁶ 90 FR 50841 (Nov. 10, 2025).

HCN emissions for lightweight aggregate kilns.¹¹² As such, the EPA did not conduct a beyond-the-floor analysis pursuant to CAA section 112(d)(2) for HF emissions from lightweight aggregate kilns or HCl production furnaces or HCN emissions from lightweight aggregate kilns.

The EPA is finalizing work practice standards for HF emissions from HWC incinerators and liquid fuel boilers. The EPA requested and analyzed data on HF emissions¹¹³ and practices used to control HF emissions from incinerators and liquid fuel boilers.¹¹⁴ The EPA generally considers a work practice standard to be justified if a significant majority (e.g., more than 55 percent of test runs) of emissions data available indicate that emissions are so low that they cannot be reliably measured (i.e., emissions are below detection limit). Emissions testing data showed that 94 percent of HF measurements from HWC incinerators and 75 percent of HF measurements from HWC liquid fuel boilers were below the detection limit.¹¹⁵ The EPA identified the best performing incinerators and liquid fuel boilers as those where all HF measurements were below the detection limit. Sources with non-detectable HF emissions reported that they used the following methods that control HF emissions: not feeding fluorinated organics, various control devices that control HCl emissions, and tracking the feedrate of fluorine.¹¹⁶ Based on this data, the EPA determined that the best performing HWC incinerators and liquid fuel boilers control HF emissions through one or a combination of not feeding fluorinated organics, actively controlling HCl emissions, and tracking the feedrate of fluorine, which forms the basis of the EPA's work practice standard for HF emissions.

The EPA also considered additional measures that would be more stringent than those reported by HWCs. The EPA proposed expanding the scope of the feed restrictions from not feeding fluorinated organics to not feeding fluorine-containing materials. Chemically, if no fluorine enters an HWC, then the HWC cannot produce HF; this control cannot be improved upon. As explained in the preamble to

the proposed rule, APCDs that control HCl are equally or more effective at controlling HF than HCl. As these HWCs already control HF emissions, there is no need for further control requirements. The information collection indicated that some HWCs are monitoring fluorine content in their combustor feed; it did not indicate that HWCs routinely report on the amount of fluorine fed to the HWC or perform emissions testing for HF. The EPA proposed and is finalizing the requirement that HWCs tracking fluorine input would need to calculate a theoretical HF output and if that theoretical output exceeds the numerical emission limit for existing solid fuel boilers, perform a one-time HF emission test at their next CPT. This one-time test performs at least three important functions. First, it provides data for the EPA to consider in a future technology review if HF emissions are more common or higher than the current data suggests.¹¹⁷ Second, it provides State regulators with information they can use to determine if State emission limits for HF are warranted. Third, it provides the public with transparent information about HWC emissions of HF. There was no single best performer from this pool of sources with all HF measurements below detection limit, so the EPA proposed and is finalizing the same work practice standard for existing and new sources.

b. HF Work Practice Standard

Comment: Four commenters supported the work practice standards for HF emissions. One commenter suggested modifying Option 1 to require one AWFCO-interlocked operating parameter instead of two.¹¹⁸ According to the commenter, a single AWFCO-interlocked operating parameter would cut off waste feed as appropriate. The commenter gave the example of a hazardous waste incinerator that uses HCl CEMS interlocked with the AWFCO system as the control and concluded that a failure of any OPL or CEM would trigger an AWFCO. The commenter also questioned the EPA's proposed numerical emission limit for solid fuel boilers and suggested the same work practice options for solid fuel boilers because the fundamental principles for the three options are also valid for solid fuel boilers. Finally, the commenter

reinforced their conclusions by explaining the technical aspects of HCl and HF control in HWCs.

One commenter pointed out that the AWFCO system requirements in the proposed work practice standards are already in use by many hazardous waste incinerators.

One commenter suggested that the EPA should allow owners or operators to demonstrate compliance for Option 1 or 2 with a notification to the Administrator (e.g., NOC Status Report) without necessarily including it in the CPT report.

Response: The EPA acknowledges the commenter's support for the work practice standard for HF emissions from incinerators and liquid fuel boilers and the many HWCs incinerators that are already in compliance. In response to comment, the EPA is modifying the work practice standard option to actively control HCl emissions by finalizing that the HWC must have at least one AWFCO-interlocked OPL other than chlorine feed rate and then comply with the HCl and chlorine gas OPLs. The EPA agrees that complying with one interlocked parameter other than chlorine feedrate meets the objective of an OPL controlling chlorine emissions; controlling only chlorine feed rate does not control HF emissions.

The EPA disagrees with the commenter that solid fuel boilers should be able to use the work practice standard for HF, given that the emissions test data from solid fuel boilers demonstrated measurable HF emissions. CAA section 112(h)(1) authorizes the EPA to promulgate a work practice standard where it is not feasible to prescribe and enforce a standard.¹¹⁹ Because it is feasible to prescribe and enforce a numerical standard for HF emissions from solid fuel boilers, the EPA is doing so.

HWCs must report the option they select to comply with the work practice standard for HF in both the NOC and the CPT report to reduce confusion and for completeness. The NOC is a streamlined summary of the outcomes of a CPT, which is in a more readable format. The CPT report contains all the information needed to determine how a source is complying with the HWC NESHAP, and so the EPA believes that it is reasonable to include this compliance information in the CPT report. Given the minimal burden associated with stating how an HWC incinerator or liquid fuel boiler is complying with the HF work practice standard, the EPA is finalizing as proposed the requirement to state the

¹¹² 90 FR 50841 (Nov. 10, 2025).

¹¹³ See Document ID No. EPA-HQ-OAR-2004-0022-0724.

¹¹⁴ See Document ID No. EPA-HQ-OAR-2004-0022-0651.

¹¹⁵ See Document ID No. EPA-HQ-OAR-2004-0022-0724.

¹¹⁶ See Document ID No. EPA-HQ-OAR-2004-0022-0651, responses to questions 39, 48, and 69. Note that no liquid fuel boilers reported tracking the feedrate of fluorine.

¹¹⁷ See, e.g., *Sierra Club v. EPA*, 884 F.3d 1185, 1203 (D.C. Cir. 2018) ("[D]ata EPA gathers while these rules are in effect should inform . . . future refinements of these rules when they are periodically reviewed.").

¹¹⁸ See proposed 40 CFR 63.1209(s)(1)(i) in Document ID No. EPA-HQ-OAR-2004-0022-0708.

¹¹⁹ 42 U.S.C. 7412(h)(1).

method of compliance in both the CPT report and NOC.

c. HF Emissions From Cement Kilns

Comment: One commenter asserted that cement kilns do not emit HF and provided information to show that HF from cement kiln stack tests during testing for the EPA's emissions testing request was invalid data because of calibration gas contamination. The commenter challenged the EPA's conclusion at proposal that 71 percent of HF data were below the detection limit for cement kilns, asserting that this 71 percent included invalid data and, without the invalid data, 100 percent of the remaining HF data were below the detection limit. The commenter referenced previous communications with the EPA warning against using HF reference gas and explaining why HF contaminates the performance tests. The commenter also cited a previous emissions testing request for the Portland Cement NESHAP to support these conclusions.

The commenter identified the following issues with the EPA's proposed approach for HF emissions from cement kilns:

- The inability to identify facilities with HCl controls.
- Non-compliance with an HCl OPL would lead to an automatic non-compliance for HF even though cement kilns do not emit HF.
- Incinerators can certify that there is no fluorine fed, but there might be a detectable amount of HF in the raw materials including fluorine found in limestone.
- Comparing MTEC against the solid fuel boiler numeric HF limit is inappropriate for cement kilns because they are not boilers.
- Fluorine monitoring would be needlessly burdensome because it would require updates to feedstream analysis, data acquisition and handling systems to calculate, and procuring new lab equipment and training staff on new lab methods.

Response: After reviewing the information provided by the commenter, the EPA agrees that HF was not measurably present in cement kiln emissions and further agrees that the long period of time necessary for HF to purge from the sample system when there is no measurable HF in the sample stream caused the few values that were above detection limit. The EPA disagrees with the commenter that it is always inappropriate to calibrate using HF, as the "sticky" nature of HF makes it more important to demonstrate that the sampling system can accurately quantify HF in the gas stream. This is a

not an otherwise unknown situation with certain gases in stack sampling and is analogous to SO₂ CEMS calibrations on low emitting SO₂ sources, where purging SO₂ from a system post calibration requires an atypically long time compared to other typical CEMS gases. The EPA is not promulgating any final HF work practice for cement kilns as HWC cement kilns do not emit measurable quantities of HF.

d. HCN Emission Limits for Cement Kilns

Comment: One commenter challenged the EPA's proposed HCN emission limit for new cement kilns. The commenter highlighted that the limit was based on a single best performing HWC cement kiln for HCN, which is a long wet-process kiln with no APCD for HCN. The commenter attested that this type of kiln has the worst emission profile for criteria pollutants. The commenter cautioned that there are no feasible controls to reduce HCN and explained why caustic scrubbers and RTOs are not feasible control measures for cement kilns. The commenter concluded that new and modified sources would be unable to simultaneously meet the proposed HCN new source limit and the criteria pollutant standards, even with pollution controls, and that existing hazardous waste cement kilns could not modernize and would have to close. The commenter recommended requiring sources to develop site-specific HBELs if necessary, in the future.

Response: In response to comment, the EPA is finalizing an HCN emission limit for new HWC cement kilns of 5.5 ppmv, dry basis at seven percent oxygen. The EPA agrees with the commenter that the Agency calculated the proposed HCN limit for new HWC cement kilns, 1.8 ppmv, dry basis at seven percent oxygen, based on data from a long wet-process kiln. In a follow-up conversation with representatives of all companies that own or operate HWC cement kilns, the EPA learned about the low likelihood of future construction of long wet process cement kilns based on industry clarification that included long wet-process kiln emitting more criteria pollutants than preheater/precalciner cement kilns, along with energy inefficiencies of long wet-process kilns in comparison to other kiln types.¹²⁰ The EPA further confirmed that the HWC wet process kilns owned by Heidelberg Materials in Logansport, IN

were built between 1961 and 1965¹²¹ while the HWC wet process kilns owned by Amrize in Paulding, OH were constructed in the 1950s.¹²² To the EPA's knowledge, no other long wet-process HWC cement kilns have been constructed since 1965. Additionally, companies are even replacing wet-process kilns with dry process kilns.¹²³

CAA section 112(d)(3) requires "that the maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator."¹²⁴ Based on comments received at proposal, the EPA reasonably believes that owners or operators of HWC cement kilns will not construct new long wet-process kilns in the future. Accordingly, the EPA does not view a long wet-process kiln as an appropriate "best controlled similar source" for new HWC cement kilns.¹²⁵ Instead, the EPA views the best performing dry cement kiln as the "best controlled similar source" for new HWC cement kilns.¹²⁶ The EPA has the "discretion to determine what metric to use in defining the 'best' source, so long as it is reasonable."¹²⁷ Additionally, the D.C. Circuit "has generally acknowledged that EPA may exercise discretion and utilize its expertise when calculating emission standards for categories of sources" under CAA sections 112(d)(2) and (d)(3).¹²⁸ Accordingly, the MACT floor emission limit for HCN emissions from new HWC cement kilns is 5.5 ppmv, dry basis at seven percent oxygen. It is also worth noting that the EPA solicited comment on this limit as a new source HCN limit for a potential subcategory of dry cement kilns in the preamble to the proposed rule.¹²⁹

At proposal, the EPA evaluated whether the incremental emissions reduction achievable with RTO would be cost-effective. The EPA estimated

¹²¹ See Document ID No. EPA-HQ-OAR-2004-0022-0695, attachments 8 and 11.

¹²² See <https://edocpub.epa.ohio.gov/publicportal/ViewDocument.aspx?docid=928108>.

¹²³ See Document ID No. EPA-HQ-OAR-2004-0022-0650.

¹²⁴ 42 U.S.C. 7412(d)(3).

¹²⁵ *Cement Kiln Recycling Coal.*, 255 F.3d at 871 (explaining that "[f]loors need not be perfect mirrors of the best performers' emissions").

¹²⁶ See *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 945 (D.C. Cir. 2004) ("The word 'similar' [in CAA section 129(a)(2)] may reasonably be read as referring to a unit that is in the same subcategory.").

¹²⁷ *Sierra Club*, 895 F.3d at 15.

¹²⁸ *U.S. Sugar Corp.*, 113 F.4th at 999.

¹²⁹ 90 FR 50814 (Nov. 10, 2025).

¹²⁰ See the memorandum entitled *Meeting and Communication Record Between the U.S. EPA and Representatives of the Cement Kiln Recycling Coalition*, which is available in the docket for this rulemaking.

that RTO would achieve approximately 95 percent reduction of HCN. This may be an overestimation of effectiveness given the relatively high HCN emissions from one Portland cement kiln with RTO installed.¹³⁰ A 95 percent reduction from the UPL MACT floor due to RTO results in an emission limit of 0.275 ppmv, which is below three times the RDL value for HCN for cement kilns (1.1 ppmv, dry basis at seven percent oxygen). Therefore, the evaluated beyond-the-floor-limit for new sources is 1.1 ppmv, dry basis at seven percent oxygen. This is the same beyond-the-floor new source limit that the EPA evaluated in the preamble to the proposed rule at section IV.A.3.b with the same associated costs and benefits.¹³¹ For the reasons explained in the preamble to the proposed rule, the EPA does not consider that installation and operation of RTO for the beyond-the-floor control of HCN emissions from HWC cement kilns is cost-effective for new HWC cement kilns and would have additional non-air quality health and environmental impacts and energy requirements.¹³² Therefore, the EPA is finalizing a new source limit for HCN emissions from HWC cement kilns as 5.5 ppmv, dry basis at seven percent oxygen.

e. Health-Based Emission Limits

Comment: Several commenters supported adopting HBELs for HF and HCN under CAA section 112(d)(4). Some of these commenters suggested that the EPA should adopt the site-specific risk assessment approach currently used for the alternative HCl HBEL.¹³³ Two commenters pointed out that emissions of HF and HCN from sites electing to implement an HBEL will necessarily be at a level that provides an ample margin of safety. Similarly, another commenter argued that using HBELs provides a flexible alternative that allows the EPA to ensure standards remain protective of public health with an ample margin of safety without unnecessarily locking future HBELs into a particular form of limit or method for establishing them.

Many commenters argued that CAA section 112(d)(4) allows the EPA to set risk-based standards in lieu of the

technology-based standards. The commenters said that rather than relying on the MACT floor approach in CAA section 112(d)(2) and (3) and (h), which can overregulate by emphasizing technological performance instead of actual risk reduction, Congress intentionally allows the EPA, in CAA section 112(d)(4), to avoid unnecessary over-regulation by tailoring the stringency of emission limits for a given threshold HAP to the specific health risks posed by that pollutant in a particular source category. A commenter elaborated that given that CAA section 112(d)(4) is under the same subsection as 112(d)(1), the EPA's authority to utilize a health threshold approach is in addition to its authority to promulgate an emissions standard; therefore, the EPA may elect to establish a health threshold with an ample margin of safety under CAA section 112(d)(4) or adopt a MACT standard as set forth under CAA section 112(d)(2). The commenter pointed out that in *Sierra Club v. EPA*, the Court recognized that the "EPA may use a health threshold rather than MACT standards for 'pollutants for which a health threshold has been established.' Such a health-based standard must include an 'ample margin of safety.'"¹³⁴ The commenter said that according to the EPA, an HBEL does not need to be as stringent as a MACT standard.¹³⁵ The commenter added that the D.C. Circuit Court has confirmed the EPA's understanding that HBELs can be less stringent than MACT standards.¹³⁶

Commenters in favor of HBELs for HF and HCN provided the following additional arguments to reinforce their support:

- The EPA has often tried to set MACT floors using limited data, resulting in standards that are overly burdensome and technically infeasible.
- Neither HF or HCN has been determined to be a non-threshold

pollutant by the EPA or any other similar public health agency.

- Citing the 2024 supplemental proposed rule for the lime manufacturing NESHAP, completion of the one-time CAA section 112(f) residual risk review lays a solid foundation for a subsequent HBEL.¹³⁷
- Risk from small levels of HCN emissions is presumably even lower than 9-in-1 million even at the highest risk site, which is far under the EPA's 100-in-1-million residual risk threshold.
- The EPA's precedent on HBELs in the HWC NESHAP, Lime NESHAP, and the Brick and Structural Clay Products Manufacturing and Clay Ceramic Manufacturing NESHAPs demonstrate the flexibility that the EPA can employ to ensure that HBELs are implemented in a manner appropriate for each applicable industry.

On the contrary, a commenter said that adopting HBELs for HF and HCN under CAA section 112(d)(4) would be unlawful and arbitrary and capricious. The commenter argued that: (1) the CAA does not authorize the EPA to set health-based emission limitations under section 112(d)(4) that are less stringent than the floor limits required under CAA section 112(d)(2) and (3); (2) the EPA may only set health-based limits with substantial evidence that the regulated pollutant(s) is not carcinogenic; and (3) the EPA may, in all cases, only set health-based limits if it has substantial evidence of an established threshold for the regulated HAP.

The commenter elaborated by citing the language of CAA section 112(d)(4) that allows the Administrator to "consider" health threshold levels "when establishing emission standards under this subsection." The commenter says that this language indicates that Congress wanted CAA section 112(d)(4) to provide for more stringent standards. The commenter said that CAA section 112(d)(2) provides that standards "promulgated under this subsection" must meet the stringency requirements in section 112(d)(2) and (3). The commenter concluded that because CAA section 112(d)(2) requires the "maximum" reductions that are achievable "including a prohibition on such emissions, where achievable," reading CAA section 112(d)(4) as authorizing more stringent standards is consistent with section 112(d)(2). The commenter added that the EPA cannot rely on Senator Durenberger's floor

¹³⁰ U.S. Environmental Protection Agency. (Last updated Mar. 30, 2026). Portland Cement Manufacturing Industry: Information Collection Request Data: <https://www.epa.gov/stationary-sources-air-pollution/portland-cement-manufacturing-industry-information-collection>.

¹³¹ 90 FR 50814 (Nov. 10, 2025).

¹³² 90 FR 50837–39. For additional discussion about RTO cost-effectiveness, see section 3.6 of the Comment Response Document, which is available in the docket for this rulemaking.

¹³³ 40 CFR 63.1215.

¹³⁴ See *Sierra Club v. EPA*, 895 F.3d 1, 8 (D.C. Cir. 2018); see also *U.S. Sugar Corp.*, 830 F.3d at 624 (recognizing the EPA's authority to set HBEL); *Desert Citizens Against Pollution v. EPA*, 699 F.3d 524, 525 (D.C. Cir. 2012) (determining that seven bioaccumulative hazardous air pollutants listed under CAA section 112(c)(6) are subject to standards under subsections 112(d)(2) or (d)(4)).

¹³⁵ 63 FR 18754, 18765 (Apr. 15, 1998) (explaining that an HBEL may be less stringent than a MACT under CAA section 112(d)(4) in the NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills); 69 FR 55218, 55241 (Sept. 13, 2004); 70 FR 59402, 59479 (Oct. 12, 2005).

¹³⁶ See *U.S. Sugar Corp.*, 830 F.3d at 623–24 (recognizing the EPA's authority to establish HBELs and finding that the EPA "may consider adopting alternative health-based emission standards—which are more lenient—for pollutants with an established health threshold").

¹³⁷ 89 FR 9088, 9093 (Feb. 9, 2024) ("Because the hazards associated with HCl were acceptable with an ample margin of safety in the 2020 RTR, it is possible to contemplate setting an HBEL for this rule.").

statement for authority to set limits that are less stringent than CAA section 112(d)(2) and (3) require.¹³⁸

The commenter also asserted that the EPA cannot show with substantial evidence that HF or HCN are not carcinogens; therefore, the EPA cannot set a health-based emission threshold for these pollutants. The commenter said that for HCN, the EPA has found that it does not have adequate evidence to determine whether it is carcinogenic.¹³⁹ The commenter pointed out that the EPA has stated that there are no studies on the carcinogenicity of HCN.¹⁴⁰ The commenter said that for HF, the EPA has stated that “[s]tudies investigating the carcinogenic potential of hydrogen fluoride are unreliable due to confounding factors and because of lack of breakdown by type of fluoride exposure.”¹⁴¹

Finally, the commenter said that even if the EPA could set an HBEL for carcinogens under CAA section 112(d)(4), it could not establish a threshold for HF and HCN because: (1) the EPA has insufficient evidence to assess whether either pollutant is carcinogenic, so it cannot establish any cancer-related threshold; (2) for HCN, no inhalation studies on reproductive/developmental effects exist, and the EPA’s reference concentration is rated “low confidence,”¹⁴² which the D.C. Circuit has already ruled cannot support an HBEL;¹⁴³ and (3) for HF, the EPA has no reference concentration or dose, and no human inhalation data on reproductive/developmental effects, so no “established” threshold exists.¹⁴⁴

Response: The EPA acknowledges commenter support and opposition regarding an HBEL for HF or HCN in the HWC NESHAP. The EPA finds that additional time is needed to evaluate

the existing body of evidence regarding toxicology and ecological impacts of HCN and HF in order to determine whether there is an existing threshold for HCN or HF.¹⁴⁵ For this reason, the EPA is not promulgating an HBEL for HCN or HF at this time.

4. What is the rationale for our final approach and final decisions for the revisions pursuant to CAA sections 112(d)(2) and (3) and 112(h) for the HWC NESHAP source category?

The EPA evaluated the comments on the proposed emission and work practice standards for HF and HCN. Consistent with the order issued by the DC District Court addressing our obligations to review and revise the HWC NESHAP¹⁴⁶ and the proposal,¹⁴⁷ the EPA is finalizing actions to address HF and HCN emissions from HWCs in this final rule pursuant to CAA sections 112(d)(2) and (3) and 112(h). The EPA notes that if the Agency had set the HF and HCN limits pursuant to CAA section 112(d)(6) as compared to CAA sections 112(d)(2) and (3), the Agency would not have any cost or impact differences because the estimated costs are for testing, recordkeeping, and reporting under all provisions. Additionally, for HF and HCN emission limits in all subcategories if the EPA had set the standard when promulgating the HWC NESHAP in 2005, the Agency would have set substantially similar standards because the best performing sources have not modified their operations for the purpose of reducing HF or HCN emissions between 2005 and 2026.

Therefore, the EPA is finalizing the proposed emission limits for HF from solid fuel boilers, HCN from solid fuel boilers, and HCN from liquid fuel boilers. The EPA is also finalizing emission limits for HCN from cement kilns and a work practice standard for HF emissions from incinerators and liquid fuel boilers. More information and rationale concerning the amendments that the EPA is finalizing pursuant to CAA section 112(d)(2) and (3) and 112(h) are in the preamble to the proposed rule, section IV.C.3 of this preamble and in the Comment Response Document, which is in the docket for this rulemaking.

D. Changes to Provisions for Periods of Startup, Shutdown, and Malfunction

1. What SSM provisions did we propose for the HWC NESHAP source category?

On November 10, 2025, the EPA proposed revisions to the SSM provisions of the HWC NESHAP consistent with *Sierra Club v. EPA*, to ensure that HWCs meet MACT standards at all times when controlling HAP emissions.¹⁴⁸ The EPA proposed to remove the exemption from emission standards and operating requirements during periods of SSM and to add new work practice standards that apply for periods of SSM.¹⁴⁹

For periods of startup and shutdown, the EPA proposed a clean fuel requirement that would limit which supplemental fuels could be burned during those periods to minimize emissions of HAP. For all periods of SSM, the EPA also proposed that all sources must have an approved SSM plan and also proposed adding an explicit requirement that sources must operate according to their approved SSM plan during periods of SSM. For periods of malfunction, the EPA also proposed the current AWFCO requirements as part of the work practice standards.¹⁵⁰

At proposal, the EPA explained that the HWC NESHAP did not involve issues relating to affirmative defenses like the one at issue in *SSM Litigation Group v. EPA*, but nevertheless requested comment on whether and how the Agency should establish regulations within this and other New Source Performance Standards (NSPS) or NESHAPs in response to the court decision.¹⁵¹ The EPA further explained that the Agency intended to address the impacts of the *SSM Litigation Group* decision in an appropriate future action given the court-ordered deadline for the HWC NESHAP and the timing of the decision.¹⁵² The EPA received comments in support of a future Agency action to add affirmative defenses in NSPS and NESHAPs through a separate rulemaking. However, these supportive

¹³⁸ National Emission Standards for Hazardous Air Pollutants from Chemical Recovery Combustion Sources, 63 FR 18754, 18765 (Apr. 15, 1998) (quoting 1 Comm. on Env’t & Pub. Works, 103d Cong., A Legislative History of the Clean Air Act Amendments of 1990, at 876 (1993) (statement of Sen. Durenberger)).

¹³⁹ U.S. EPA, Hydrogen Cyanide and Cyanide Salts, https://iris.epa.gov/ChemicalLanding/&substance_nmbr=60 (last updated Sep. 28, 2010).

¹⁴⁰ U.S. EPA, Cyanide Compounds (“Cyanide Fact Sheet”) 2 (2000), <https://www.epa.gov/sites/default/files/2016-09/documents/cyanide-compounds.pdf>.

¹⁴¹ U.S. EPA, Hydrogen Fluoride (Hydrofluoric Acid) (“HF Fact Sheet”) 3 (2016), <https://www.epa.gov/sites/default/files/2016-10/documents/hydrogen-fluoride.pdf>.

¹⁴² U.S. EPA, Cyanide Compounds (“Cyanide Fact Sheet”) 2 (2000), <https://www.epa.gov/sites/default/files/2016-09/documents/cyanide-compounds.pdf>.

¹⁴³ *Sierra Club*, 895 F.3d at 12.

¹⁴⁴ U.S. EPA, Hydrogen Fluoride (Hydrofluoric Acid) (“HF Fact Sheet”) 3 (2016), <https://www.epa.gov/sites/default/files/2016-10/documents/hydrogen-fluoride.pdf>.

¹⁴⁵ See generally *Sierra Club v. EPA*, 895 F.3d at 9–13.

¹⁴⁶ Order, *Blue Ridge Envtl. Def. League v. Regan*, 22–cv–3134 (APM) (D.D.C. Dec. 12, 2024).

¹⁴⁷ See 90 FR 50814 (Nov. 10, 2025).

¹⁴⁸ 551 F.3d 1019 (D.C. Cir. 2008) (vacating the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), and holding that under CAA sections 112 and 302(k), emission standards or limitations must be continuous in nature).

¹⁴⁹ See 40 CFR 63.1206(b)(1)(i) for the SSM exemption.

¹⁵⁰ 80 FR 75178, 75211–14 (Dec. 1, 2015); see also 85 FR 49434, 49441–46 (Aug. 13, 2020).

¹⁵¹ *SSM Litig. Grp. v. EPA*, 150 F.4th 593, 599 (D.C. Cir. 2025) (holding that a “complete affirmative defense . . . is permissible because it relates to the antecedent question of liability and therefore does not impinge on the judiciary’s authority to award ‘appropriate civil penalties’”).

¹⁵² 90 FR 50814, 50847 (Nov. 10, 2025).

comments did not provide a suggested specific timeframe for the EPA to promulgate such a rule. Conversely, the EPA also received comments urging the Agency not to engage in rulemaking for purposes of creating any affirmative defense or exemption. A summary of these comments is available in the Comment Response Document, which is in the docket for this rulemaking.

2. How did the SSM provisions for the HWC NESHAP source category change since proposal?

The EPA is finalizing work practice standards for periods of SSM that are generally consistent with the Agency's proposal. Additionally, in response to comments received on the proposed SSM provisions, the EPA is making the following revisions to the proposal: (1) adding distinct definitions of startup and shutdown for different types of HWCs, (2) requiring that all APCDs must be in operation as expeditiously as possible and before any waste material that is not supplemental fuel is introduced into the HWC, (3) clarifying that transitioning from a mode of operation representing an otherwise applicable standard triggers a period of startup, (4) for solid fuel boilers only, including coal in the definition of supplemental fuel, (5) allowing cement kilns to burn traditional fuels during periods of startup after the combustion chamber reaches 1200 °F and the HWC is operating all APCDs, (6) adding a definition for "other gas 1 fuel," (7) requiring that the SSM plan be submitted, not approved, within 180 days of the effective date of this final rule, (8) requiring HWCs to comply with their SSM plans upon submittal and any changes to their SSM plans as a result of the approval process upon notification of approval, and (9) clarifying text regarding AWFCOs during periods of SSM.

3. What key comments did we receive on SSM provisions for the HWC NESHAP source category?

This section provides summaries of and responses to key comments received regarding the EPA's proposed work practice standards for periods of SSM. The comments are organized as follows: (1) legal sufficiency of SSM work practice standards, (2) definitions of startup and shutdown, (3) definition of supplemental fuel, (4) SSM plan approval, and (5) AWFCO during periods of SSM. Comment summaries and the EPA's responses for additional issues raised regarding the revisions pursuant to CAA sections 112(d)(2) and (3) and 112(h) for the HWC NESHAP are in the Comment Response Document,

which is available in the docket for this rulemaking.

a. Legal Sufficiency of SSM Work Practice Standards

Comment: Several commenters supported the EPA's partial withdrawal of the July 2024 proposal to apply numeric emission standards during malfunction events. Some of these commenters said that the EPA's proposed work practice standards for periods of SSM align with waste combustor design and pollution control systems that improve safety and reduce emissions, while also matching established industry best practices for operating during SSM conditions. A commenter said that SSM events are brief, typically lasting under three hours, which is shorter than the minimum test duration required by the EPA, and represent only temporary operating conditions for HWCs. Another commenter said that the EPA's proposed work practice standards for periods of SSM are consistent with the design of waste combustors and associated pollution control systems, which are based on best available control technology and allow for the use of Emergency Safety Vents (ESVs). The commenter pointed out that the ESV feature is integral to the design of a combustor and intended to prevent a catastrophic failure of pollution control equipment and possible danger to plant personnel and combustor equipment in the event of an unplanned shutdown or malfunction. Similarly, another commenter noted that enforceable SSM standards improve safety and environmental accountability. The commenter requested that the EPA spell out exactly what compliance should look like during SSM events and to acknowledge that actions taken to protect workers, equipment, and nearby communities should not create unintended liability or discourage responsible emergency decision-making.

Another commenter warned that imposing numerical emission limits uniformly during SSM events: (1) disregards the physical limitations of combustion systems and control equipment, (2) does not necessarily reduce emissions, and (3) may instead encourage unsafe or unstable operating practices. The commenter provided the following rationale in support of work practice standards for periods of SSM in lieu of emission limits:

- Properly designed work practice requirements focus on operator actions, system controls, and procedural safeguards that influence emissions during transitional events. They provide clearer compliance expectations and

more meaningful environmental protection than after-the-fact numerical violations.

- Penalizing facilities for malfunctions even when they follow approved procedures could discourage transparency and timely fixes, undermining the cooperative approach needed for effective environmental regulation.

- Overly prescriptive SSM requirements may discourage facilities from performing necessary maintenance or upgrades, increasing long-term environmental and safety risks.

- Safety-driven operational choices sometimes need to take precedence over strict emissions control, and regulations should allow for that rather than impose conflicting obligations.

- SSM requirements should not become enforcement traps; compliance should hinge on following approved procedures in good faith, not on hindsight divorced from real operating conditions.

- HWCs vary widely in design and operation, so a uniform SSM rule can impose irrelevant or counterproductive requirements, making flexibility essential to ensure both practicality and environmental protection.

Some commenters said the use of work practice standards for periods of SSM is supported by statute and the courts. A commenter said that CAA section 302(k) explicitly provides that "any design, equipment, work practice or operational standard promulgated under [the CAA]" may constitute a valid "emission limitation." The commenter added that in *Sierra Club v. EPA*, the D.C. Circuit relied on *Kamp v. Hernandez*, where the court specifically held "the requirement of regulation on a continuous basis does not necessarily imply that the source always be subject to precisely the same limitation." The commenter said that while CAA section 302(k) may confer a "requirement of regulation on a continuous basis," this does not necessarily equate to continuous numeric limits.¹⁵³ The commenter concluded that numeric limits during malfunction periods are not required; work practice standards are an acceptable alternative that maintain continuous compliance with CAA section 112.

Another commenter echoed that while CAA section 112 requires emission limitations to apply continuously, the broad definition of the term "emission limitation" in CAA section 302(k) includes in pertinent part ". . . any requirement relating to the

¹⁵³ *Kamp v. Hernandez*, 752 F.2d 1444, 1452 (9th Cir. 1985).

operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.” The commenter added that the D.C. Circuit found in *Sierra Club v. EPA* that under certain conditions it is not feasible to accurately measure emissions or enforce a numeric standard, and that in such instances the EPA may establish work practice standards as authorized in CAA section 112(h).¹⁵⁴

Another commenter added that *Sierra Club v. EPA* did not address SSM provisions under any specific NESHAP, including the HWC NESHAP, so the decision has no bearing on whether final HWC NESHAP rule’s SSM provisions violate the requirement for continuous CAA section 112 standards.¹⁵⁵ The commenter said that the Court noted that the EPA had not tried to justify the general duty provision as a CAA section 112(h) work practice, which is allowed when numerical limits are not feasible. The commenter stated that this signaled the Court’s acceptance that work practices are permissible so long as they ensure continuous compliance with CAA section 112. The commenter argued that the EPA’s proposed work practice standards for periods of SSM meet the requirements of the CAA that emission limits must apply at all times and provided the following rationale in support of their position:

- The commenter pointed to the joint initial brief filed by industry petitioners on August 16, 2000, which challenged the EPA’s SSM provisions in the 1999 final HWC NESHAP Rule which stated that the standards and operating parameter limits apply during periods of SSM except when hazardous waste was not being combusted. At that time, industry argued that the provisions were non-achievable because all technologies fail on occasion and the EPA provided no recourse for those occurrences, thereby conflicting with (sic) CAA section 112(b)(3).

- Citing *Cement Kiln Recycling Coalition v. EPA*, the commenter stated that the Court cast doubt on the EPA’s approach to SSM but declined to rule on the industry’s challenge to SSM provisions while also noting that industry challengers might have valid concerns over the Agency disallowing exemptions during SSM, and uncontrollable emergency valve events.¹⁵⁶

The EPA agreed with commenters “who state that sources must be exempt from technology-based emission standards and operating limits during SSM events” in the preamble to the 2005 final HWC NESHAP rule.¹⁵⁷

The commenter stated that the AWFCO requirement already minimizes emissions when malfunctions occur; and this has been a requirement since the first HWC NESHAP regulations were promulgated in 1999.¹⁵⁸ The “hopelessly generic” problem discussed in *U.S. Sugar Corp. v. EPA* does not apply to the AWFCO requirement.¹⁵⁹

Some commenters stated that the combined requirements of a SSM plan and AWFCO system ensure continuous compliance and function like a work practice by limiting emissions through a non-numerical control. These commenters further noted that the combined requirements of a SSM plan and AWFCO system restricts emissions at all times and, therefore, align with the continuous compliance principles in *Sierra Club*.

On the other hand, other commenters opposed the EPA’s proposal to not apply numeric emission standards during SSM events. A commenter argued that the EPA’s proposed work practice standards for periods of SSM do not ensure continuous compliance. The commenter said that *Sierra Club* requires emissions standards or limits to apply continuously during SSM events. The commenter contended that requiring an SSM plan just allows polluters to follow their own plans, which may or may not be meaningful. The commenter concluded that having a procedure on paper is no substitute for requiring facilities to meet CAA section 112-compliant emission standards at all times. Another commenter argued that the proposed work practice standards for periods of SSM would greatly increase pollution exposure for already burdened communities, cannot plausibly protect public health, and are especially alarming given the extraordinarily high number of SSM events (*i.e.*, 20,000 to 30,000 based off compliance documents) reported in the last five years at some incinerators.

Response: The EPA acknowledges comments in support of work practice standards during periods of SSM.

The EPA disagrees with the comment that the work practice standards for periods of SSM do not constitute emission limits that apply

continuously.¹⁶⁰ The EPA may set work practice standards when “the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.”¹⁶¹ According to the D.C. Circuit, “[w]ork practice standards can be thought of as a statutory Plan B; EPA may resort to them only when using numeric limits is ‘not feasible.’ . . . The statute defines when EPA may conclude that numeric limits are infeasible, including—as relevant here—when ‘the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.’”¹⁶² Thus, the “EPA’s authority to resort to a work practice standard does not depend on its determining that numerically gauging emissions would be impractical throughout the entire startup period for every single source to which a work practice applies; the Act requires only that EPA determine that it is impractical to measure emissions for the ‘particular class of sources’ at issue.”¹⁶³

As the EPA explained at proposal, the combination of a clean fuel requirement during periods of startup and shutdown, a requirement to develop and follow an approved SSM plan during periods of SSM, and the AWFCO system requirement constitutes a work practice standard for periods of malfunction.¹⁶⁴ Here, specifically, the EPA is promulgating work practice standards for periods of SSM because it is often not feasible to accurately measure emissions of HWCs during periods of SSM. Periods of SSM are transitory and often unstable for HWCs. The isokinetic sampling required in the primary means of compliance demonstration during stack testing cannot be met during unstable periods of operation and, therefore, it is not technically feasible for operators to conduct the emissions testing necessary to demonstrate compliance with numeric emission limits during those periods.

¹⁶⁰ *U.S. Sugar Corp.*, 830 F.3d at 666–67 (“A work-practice standard that requires facilities to minimize the time their boilers spend in startup or shutdown thus seems calculated to maximally reduce emissions during those periods.”).

¹⁶¹ 42 U.S.C. 7412(h)(2)(B).

¹⁶² *Sierra Club*, 884 F.3d at 1190 (upholding work practice standards for periods of startup and shutdown that included requirements to initiate startup and shutdown with clean fuels, to start certain pollution control devices “as expeditiously as possible,” and to develop and follow an SSM plan).

¹⁶³ *Id.* at 1201 (quoting 42 U.S.C. 7412(h)(2)(B)).

¹⁶⁴ See the preamble to the proposed rule, 90 FR 50814 (Nov. 10, 2025), section IV.E.1, for more information about the proposed work practice standards for periods of SSM.

¹⁵⁴ 551 F.3d 1019.

¹⁵⁵ *Id.*

¹⁵⁶ 255 F.3d 855.

¹⁵⁷ 70 FR 59402, 59494 (Oct. 12, 2005).

¹⁵⁸ See 40 CFR 63.1206(c)(3) for information about the AWFCO requirement.

¹⁵⁹ *U.S. Sugar Corp.*, 831 F.3d at 608–09.

Accordingly, the EPA does not have any data on which to base numeric emission limits for periods of SSM. In addition, many OPLs required under the HWC NESHAP cannot be met during startup and shutdown, including minimum combustion temperature. Further, some APCDs cannot operate during the full duration of startup and shutdown. One example is that stack gas cannot be directed to a baghouse until the temperature surpasses the dew point.¹⁶⁵

The EPA also disagrees that approved SSM plans may or may not be meaningful. In addition to the elements of the SSM plan described in general provisions of 40 CFR part 63, the SSM plan must include a description of potential causes of malfunctions that may result in significant HAP releases and of actions the source is taking to minimize the frequency and severity of these malfunctions.¹⁶⁶ This final rule requires that all owners or operators of HWCs submit their SSM plans for approval by the Administrator, which serves to ensure that SSM plans are appropriate to minimize both the occurrence of unusual combustion events like malfunctions and emissions during periods of SSM. Any changes that may significantly increase emissions must also be submitted for approval. Further, it bears note that the D.C. Circuit cast doubt on our removal of the SSM exemption as far back as 2001 in *Cement Kiln Recycling Coalition v. EPA*.¹⁶⁷

Owners or operators of HWCs must meet the requirements of the HWC NESHAP at all times, including the work practice standard for periods of SSM during such periods.

The EPA disagrees that the work practice standards for periods of SSM will increase emissions of HAP and are not protective of public health. Given that emission limits under the HWC NESHAP historically have not applied during periods of SSM, the EPA fails to see how an enforceable work practice

standard could lead to increased emissions of HAP, and the commenter has not provided support for that statement. The commenter also provides no support for the statement that the work practice standards for periods of SSM cannot plausibly protect public health and did not provide the alleged compliance documents showing “20,000 to 30,000 SSM events” reported in the last five years at some incinerators. The EPA reiterates that the definition of “malfunction” governing the HWC NESHAP requires that a malfunction event must be sudden, infrequent, and not reasonably preventable; failures that are caused in part by poor maintenance or careless operation are not malfunctions.¹⁶⁸

Comment: A commenter argued that the alternative fuel requirement is not sufficient to comply with *Sierra Club*. The commenter asserted that the EPA’s claim that the clean fuel requirement will “minimize” emissions says nothing about how much emissions will be reduced and whether such reductions reflect the emissions of the best performers. The commenter said that the EPA failed to demonstrate that the SSM plan and clean fuel requirements together represent both: (1) the “average emission limitation achieved” by the best performing sources, and (2) the maximum reduction in emissions “achievable” considering cost and other relevant factors.

Response: The EPA disagrees with the commenter’s assumption that the alternative fuel requirement is the only requirement under the work practice standard for periods of startup and shutdown. Rather, the work practice standard for periods of startup and shutdown is a combination of the alternative fuel requirement and following an approved SSM plan. As the EPA stated in the proposed rule preamble, the Agency cannot feasibly measure accurate HAP emissions during periods of startup and shutdown because the transitory and unstable emissions during periods of startup and shutdown mean that sources cannot achieve the isokinetic sampling required for the primary means of compliance demonstration during stack testing.¹⁶⁹ Because the EPA cannot feasibly measure HAP emissions for HWCs during periods of startup and shutdown, the EPA also cannot quantitatively measure emissions reductions achieved by the work practice standard or numerically define best performing

sources.¹⁷⁰ To determine the best performers for periods of startup and shutdown, the EPA requested and analyzed information on how sources minimized emissions during these periods.¹⁷¹ Sources generally indicated that they were complying with the requirements already in the HWC NESHAP to minimize emissions during periods of startup and shutdown (e.g., following their SSM plan, operator training, following startup and shutdown procedures). Some sources indicated that in addition to complying with the requirements already in the HWC NESHAP, they burned only clean fuel during periods of startup and shutdown.

Based on this data, the EPA determined that the best performing HWCs both burned only clean fuels during periods of startup and shutdown and complied with their SSM plan during such periods. The HWC NESHAP already requires operator training and certification, with annual review or refresher training.¹⁷² Both the initial and annual training must include operation of the combustor, including proper startup and shutdown procedures; operation of air pollution control equipment; and actions to correct malfunctions or conditions that may lead to malfunctions. This training requirement ensures that operators know and can follow the HWC’s SSM plan, augmenting the SSM plan portion of the work practice standards for periods of SSM. Further, the definitions of startup and shutdown described in section IV.D.3.b of this preamble constitute an implicit emissions limitation by ensuring that periods of startup and shutdown are “not needlessly drawn out,” thereby minimizing emissions that are not constrained by the numeric emissions limitations of periods of normal operations.¹⁷³

While the information collection generally did not indicate if the SSM plans were approved, the EPA reasoned that having an approved SSM plan would better ensure that the contents of the SSM plan were reasonable and protective of human health and the environment. Accordingly, the EPA proposed a work practice standard of burning only clean, supplemental fuels during periods of startup and shutdown and requiring HWCs to follow an

¹⁶⁵ *Sierra Club*, 884 F.3d at 1204 (recognizing “technological limitations on the use of control devices during the volatile conditions that characterize startup”).

¹⁶⁶ *Id.* (upholding work practice standards for periods of startup and shutdown that included requirements to develop and follow an approved SSM plan).

¹⁶⁷ 255 F.3d 872 (declining request to remand 1999 standards to the EPA and instead vacating standards in their entirety because “industry petitioners may be correct that EPA should have exempted HWCs from regulatory limits during periods of SSM, permitting sources to return to compliance by following the steps of a SSM plan filed with the Agency. We have similar doubts about EPA’s decision to require sources to comply with standards even during openings of emergency safety valves caused by events beyond the sources’ control.”).

¹⁶⁸ See 40 CFR 63.2 definition of “Malfunction.”

¹⁶⁹ See 90 FR 50814, 50846 (Nov. 10, 2025).

¹⁷⁰ *Sierra Club*, 884 F.3d at 1201 (CAA section 112(h)(2)(B) “requires only that EPA determine that it is impractical to measure emissions for the ‘particular class of sources’ at issue”).

¹⁷¹ See Document ID No. EPA-HQ-OAR-2004-0022-0651.

¹⁷² See 40 CFR 63.1206(c)(6).

¹⁷³ *Sierra Club*, 884 F.3d at 1204.

approved SSM plan during those periods. Combined they “are materially more precise and demanding than the general duty standard . . . disapproved in *Sierra Club*.”¹⁷⁴ The EPA notes that the D.C. Circuit has previously upheld very similar work practice standards for industrial boilers consisting of using clean fuels, following a startup and shutdown plan, engaging APCDs as expeditiously as possible, and limiting the amount of time spent in startup and shutdown as consistent with CAA section 112’s MACT approach.¹⁷⁵

The commenter neither suggested that another work practice standard would better reduce emissions during periods of startup and shutdown nor provided additional work practices that the EPA could incorporate into the proposed work practice standard to minimize HAP emissions.

Comment: Several commenters supported the EPA’s proposal to require an SSM plan. However, other commenters argued that the EPA’s proposed SSM plan is legally inadequate because it functions like the “general duty” standard that the D.C. Circuit struck down in *Sierra Club v. EPA*. The commenter asserted that an SSM plan merely requires facilities to minimize emissions and fix malfunctions promptly, which are obligations the Court already rejected as insufficient substitutes for real, enforceable emission limits. The commenter concluded that the EPA must impose actual CAA section 112-compliant emission standards that apply during SSM periods rather than relying on SSM plans.

Response: The EPA acknowledges commenters’ support for requiring an SSM plan.

The EPA disagrees with commenters who equate the requirement for an approved SSM plan as part of work practice standards for periods of SSM to the “general duty” standard that the D.C. Circuit struck down in *Sierra Club v. EPA*. In *Sierra Club v. EPA*, the Court’s decision centered around the requirement that there must be continuous section 112-compliant standards and the EPA’s general duty regulatory provisions that exempt sources from emission limitation under CAA section 112(d), or an alternate standard under CAA section 112(h) during periods of SSM. The Court ruled that “[b]ecause the general duty is the

only standard that applies during SSM events—and accordingly no section 112 standard governs these events—the SSM exemption violates the CAA’s requirement that some section 112 standard apply continuously.”¹⁷⁶ The Court did not rule that requirements to minimize emissions, fix malfunctions immediately, and have an SSM plan are inappropriate, but that as promulgated, the general duty standard was not a CAA section 112(d) or 112(h) standard. Moreover, since then the D.C. Circuit has rejected a somewhat similar argument to the one made by the commenter finding instead that work practice standards that include the use of clean fuels at start up and shut down, starting certain APCDs as expeditiously as possible, and the requirement to develop and follow an SSM plan to be “meaningful constraint[s].”¹⁷⁷

As previously explained, it is not feasible to measure emissions during periods of SSM and so work practice standards under CAA section 112(h) are appropriate.¹⁷⁸ The EPA has also explained that the clean fuel requirements during periods of startup and shutdown, AWFCO requirement, and the requirement to follow an approved SSM plan constitute work practice standards for periods of SSM consistent with requiring the maximum degree of emissions reductions based on the best performing sources for which the Administrator has data.¹⁷⁹ Promulgating these requirements as a CAA section 112(h) work practice standard makes them CAA section 112-compliant, enforceable emission standards that apply during periods of SSM.

Comment: Commenters said that combined with an SSM plan, the use of an AWFCO system ensures that corrective actions may be taken to minimize emissions during malfunction periods, during which time waste will not be fed to the combustor. A commenter said that the AWFCO system immediately (or within a minute), automatically cuts off the hazardous waste feed to the HWC when an AWFCO event occurs. The commenter pointed out that where an AWFCO is triggered, operators must continue to send combustion gases to the air pollution control system while

hazardous waste remains in the combustion chamber.

On the other hand, a commenter argued that the use of an AWFCO system combined with an SSM plan does not meet the requirement for CAA section 112-complaint standards under the *Sierra Club* decision. The commenter said that the EPA failed to demonstrate that the SSM plan and AWFCO system requirements together represent both (1) the “average emission limitation achieved” by the best performing sources, and (2) the maximum reduction in emissions “achievable” considering cost and other relevant factors.

Response: The EPA acknowledges commenters’ support. Similar to how the EPA developed the work practice standard for periods of startup and shutdown, the Agency requested and analyzed information on how sources minimized emissions during periods of malfunction.¹⁸⁰ Sources generally indicated that they were complying with the requirements already in the HWC NESHAP to minimize emissions during periods of malfunction (e.g., following their SSM plan, operator training, complying with the AWFCO requirements). Sources did not indicate additional methods for minimizing emissions during periods of malfunction. Based on this data, the EPA determined that the best performing HWCs both complied with the AWFCO provisions and complied with their SSM plan during periods of malfunction. While the information collection generally did not indicate if the SSM plans were approved, the EPA reasoned that having an approved SSM plan would better ensure that the contents of the SSM plan were reasonable and protective of human health and the environment.

All HWCs are also required to operate an AWFCO system, which is a system that immediately (or within one minute in some circumstances), automatically cuts off the hazardous waste feed to the HWC when an OPL or other certain monitoring condition indicated in the HWC NESHAP is exceeded or any component of the AWFCO system fails. These monitoring conditions are set to ensure that HWCs always comply with the emission limits of the HWC NESHAP. To avoid any potential exceedances, many HWC owners or operators set their AWFCO system to trigger when a monitored parameter approaches the monitoring condition limit instead of when the parameter exceeds it. During an AWFCO, as one

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (upholding work practice standards for periods of startup and shutdown that included requirements to initiate startup with clean fuels, develop and follow an approved SSM plan and to start certain pollution control devices “as expeditiously as possible”).

¹⁷⁶ *Sierra Club*, 551 F.3d at 1028.

¹⁷⁷ *Sierra Club*, 884 F.3d at 1203 (upholding the “EPA’s conclusion that its work practice standard has constraining effect that a general-duty standard lacks”); see also *See U.S. Sugar Corp.*, 830 F.3d at 663.

¹⁷⁸ See 90 FR 50814, 50846 (Nov. 10, 2025) and section IV.D.3.a of this preamble.

¹⁷⁹ See section IV.D.3.a of this preamble.

¹⁸⁰ See Document ID No. EPA-HQ-OAR-2004-0022-0651.

commenter noted, owners or operators must continue to send combustion gases to the air pollution control system while hazardous waste remains in the combustion chamber of the HWC. Hazardous waste feed to the HWC cannot restart until the monitoring conditions are within the specified limits, which typically takes no less than one hour. The AWFCO system must generally be tested at least weekly. The AWFCO system triggering does not necessarily indicate that the HWC is malfunctioning, but a malfunction that may lead to excess HAP emissions will trigger the AWFCO system.¹⁸¹ The AWFCO requirements minimize emissions during malfunctions that could cause exceedances by requiring swift hazardous waste feed shut off. Because hazardous waste is a primary source of HAP emissions for most HWCs, shutting off hazardous waste feed immediately minimizes emissions while the owner or operator can diagnose and resolve the issue that triggered the AWFCO. Finally, it bears note that the D.C. Circuit cast doubt on our removal of the SSM exemption as far back as 2001 in *Cement Kiln Recycling Coalition v. EPA*.¹⁸² Accordingly, the EPA proposed a work practice standard of the AWFCO provision and requiring HWCs to follow an approved SSM plan during periods of malfunction. The commenter neither suggested that another work practice standard would better reduce emissions during periods of malfunction nor provided additional work practices that the EPA could incorporate into the proposed work practice standard to minimize HAP emissions.

b. Definitions of Startup and Shutdown

Comment: A commenter said that although the EPA's proposed SSM approach is "lawful" and "reasonable," it cannot be finalized until the EPA creates startup and shutdown regulations that fit how HWC cement kilns operate. The commenter argued that the proposed work practices are designed for incinerators and fail to account for the fact that cement kilns exist to produce Portland cement. The commenter argued that the SSM requirements must incorporate concepts

reflecting that both raw materials and fuel are introduced during startup and shutdown, building on the framework in the Portland Cement NESHAP.¹⁸³ The commenter said that the EPA's proposed "shutdown" regulation is unworkable because it prohibits a facility—once it initiates shutdown—from going back to startup without first firing supplemental fuel. The commenter contended that this is inconsistent with operating procedures, and a short interruption in hazardous waste combustion should not lead to this result.

The commenter requested the EPA adopt the following definition for "startup":

Startup means the time from when a shutdown hazardous waste burning cement kiln begins firing supplemental fuel. Startup ends at the earlier of either 120 minutes after the continuous introduction of kiln feed or 15 minutes after hazardous waste is continuously fired into the hazardous waste burning cement kiln.

The commenter also requested the EPA finalize the following requirements:

- During startup, the hazardous waste burning cement kiln shall not start the flow of hazardous waste fuels to the hazardous waste burning cement kiln until the applicable operating parameters and emission levels are within the limits specified in the NOC,¹⁸⁴ unless the owner or operator does so in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown.¹⁸⁵

- The owner or operator must operate in accordance with the SSM plan during periods of shutdown.

The commenter explained that their suggested rule text makes it clear that a source would not have to keep burning supplemental fuel during a later startup; and instead would allow the source to switch back to traditional or hazardous-waste fuel sooner once the hazardous waste burning cement kiln reaches the necessary operating conditions or emission levels. The commenter added that their suggested rule text would allow HWC cement kilns the ability to restart hazardous waste fuel firing after shutdown begins by complying with the requirements for restarting waste feed after an AWFCO.¹⁸⁶

Another commenter also suggested that there is considerable variation in construction and operation of HWCs between and within HWC subcategories, which makes it difficult to develop

definitions of startup and shutdown that fit all sources. The commenter offered the example of a solid fuel boiler that may start up on supplemental fuel, begin supplying useful thermal energy to a steam header, then begin combusting non-hazardous waste, and stated that the solid fuel boiler could operate in this way (*i.e.*, normal operation) for an extended period of time before it needs to manage hazardous waste. The commenter pointed out that under the proposed definition of startup, this would mean that the solid fuel boiler was operating in a "startup" period until it introduces hazardous waste. The commenter suggested that the EPA should define either "startup" and "shutdown" on a site-specific basis in approved SSM plans or develop different startup and shutdown definitions for incinerators, cement kilns, boilers, and HCl production furnaces.

Response: The EPA acknowledges the commenter's general support for work practice standards for periods of SSM.

In response to comments on the proposed SSM provisions that highlighted the differences in startup and shutdown for the HWC subcategories, the EPA is finalizing separate definitions of startup for incinerators, cement kilns and lightweight aggregate kilns, solid fuel and liquid fuel boilers, and HCl production furnaces. As suggested by a commenter, the EPA has utilized the frameworks developed in corresponding rules for similar sources that do not burn hazardous waste: the Portland Cement NESHAP¹⁸⁷ for cement kilns, lightweight aggregate kilns, and HCl production furnaces and the major-source industrial boilers NESHAP¹⁸⁸ for solid fuel boilers and liquid fuel boilers. The new definitions for startup are as follows:¹⁸⁹

- For incinerators, startup begins with the firing of supplemental fuel in the combustion chamber or with transitioning from a period of shutdown. All APCDs must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the HWC. Startup ends once the system has stabilized but no later than 15 minutes after either hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown or any waste material that is

¹⁸¹ For the HWC NESHAP, malfunction is defined in 40 CFR part 63.2 as "any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions."

¹⁸² 255 F.3d 872 (vacating standards in the entirety instead of remanding to the EPA).

¹⁸³ 40 CFR 63.1341.

¹⁸⁴ See 40 CFR 63.1207(j) and 40 CFR 63.1210(d).

¹⁸⁵ 40 CFR 63.1206(c)(2)(v)(B).

¹⁸⁶ 40 CFR 63.1206(c)(3)(iii).

¹⁸⁷ See 40 CFR 63.1341.

¹⁸⁸ See 40 CFR 63.7575.

¹⁸⁹ The EPA is codifying these definitions in 40 CFR 63.1206(c)(10).

not supplemental fuel is fed into the HWC, whichever occurs first.¹⁹⁰

- For cement kilns and lightweight aggregate kilns, startup begins when a kiln either begins firing supplemental fuel or transitions from a period of shutdown. All APCDs must be in operation as expeditiously as possible and prior to the introduction of kiln feed or any waste material that is not supplemental fuel into the kiln. Startup ends 120 minutes after the continuous introduction of kiln feed, when the feed rate exceeds 60 percent of the kiln design limitation rate, or 15 minutes after hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown is fed into the HWC, whichever occurs first.¹⁹¹ Cement kilns may fire traditional fuels as defined in 40 CFR 241.2 once the HWC achieves 1200 °F measured at a location that best represents, as practicable, the bulk gas temperature in the combustion zone and all APCDs are operational.

- For solid fuel boilers and liquid fuel boilers, startup begins with either the first-ever firing of supplemental fuel in a boiler for the purpose of supplying useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or producing electricity, or the firing of fuel in a boiler for any purpose after a shutdown event. All APCDs must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the boiler. Startup ends at the earliest of the following: four hours after when the boiler supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes; the boiler produces electricity; or 15 minutes after either hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown or any waste material that is not supplemental fuel is fed into the boiler.¹⁹²

- For HCl production furnaces, startup begins when an HCl production furnace either begins firing supplemental fuel or transitions from a period of shutdown. All APCDs must be in operation as expeditiously as possible and prior to the introduction of any

waste material that is not supplemental fuel into the HCl production furnace.

Startup ends 120 minutes after the continuous introduction of materials intended to produce HCl to the HCl production furnace or 15 minutes after either hazardous waste that is not fed in accordance with the AWFCO requirements when burning hazardous waste during startup and shutdown or any waste material that is not supplemental fuel is fed into the HCl production furnace, whichever is earlier.¹⁹³

The new definitions for shutdown are as follows:

- For incinerators, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and the feed of non-hazardous waste materials to the combustion chamber is cut off and ends when fire is extinguished in the combustion chamber, the incinerator enters another mode of operation, or when a startup is initiated.

- For cement kilns and lightweight aggregate kilns, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and kiln feed is halted and ends when continuous kiln rotation ceases, the kiln enters another mode of operation, or when a startup is initiated.

- For solid fuel boilers and liquid fuel boilers, shutdown begins when the boiler no longer supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler, whichever is earlier, and when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time. Shutdown ends when the boiler no longer supplies useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is being combusted in the boiler, the boiler enters another mode of operation, or when startup is initiated.

- For HCl production furnaces, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and raw material feed to the HCl production furnace is halted. Shutdown ends when the HCl production furnace flame is extinguished, the HCl production furnace enters another mode

of operation, or when a startup is initiated.

The EPA is finalizing as proposed that hazardous waste may not be fed to an HWC until applicable operating parameters and emission levels are within the limits set by the NOC and that sources must operate according to their SSM plan during periods of shutdown. The EPA disagrees that the requirement not to burn hazardous waste in an HWC until applicable operating parameters and emission levels are within the limits set by the NOC should be different for each subcategory, given that the only substantive change suggested by the commenter was the inclusion of the phrase “the hazardous waste burning cement kiln.”

Comment: A commenter expressed concern that the proposed definition of startup does not consider switching from an “otherwise applicable” standard and instead suggested that the definition of startup should include the phrase “or when transitioning from an otherwise applicable standard.” Additionally, regarding the definition of startup the commenter expressed confusion as to why the EPA included the following sentence: “When startup is conducted under an otherwise applicable standard according to § 63.1206 (b)(1)(ii), startup is defined in accordance with the otherwise applicable standard.” The commenter said that when a unit conducts startup while operating under an otherwise applicable standard, the HWC NESHAP does not apply and the unit must instead follow the startup (and shutdown) requirements of that standard, and the commenter suggested that the EPA delete that sentence.

Response: The EPA agrees with the commenter that it is appropriate to initiate a period of startup when transitioning from a mode of operation representing an otherwise applicable standard.¹⁹⁴ The EPA disagrees with the commenter that the referenced sentence should be deleted. Generally, an HWC operating under a mode of operation representing an otherwise applicable standard will have similar, but not identical, operating conditions and requirements. When transitioning out of a mode of operation representing an otherwise applicable standard, the combustor changes from fully complying with one set of emissions limits and OPLs to fully complying with a separate set. This warrants a startup period because during this transition, the combustor may not be able to fully

¹⁹⁰ See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup or shutdown.

¹⁹¹ See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup or shutdown.

¹⁹² See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup or shutdown.

¹⁹³ See 40 CFR 63.1206(c)(2)(v)(B) for the AWFCO requirements when burning hazardous waste during startup or shutdown.

¹⁹⁴ See 40 CFR 63.1206(b)(1)(ii) and 40 CFR 63.1209(q).

comply with one set of limits or the other due to differences in controlling operating parameters and OPLs. However, based on the definitions of startup described for different types of HWCs previously in this section, an HWC could simultaneously trigger the start and end of startup (e.g., an incinerator operating with the Commercial and Industrial Solid Waste Incinerator (CISWI) rule as an otherwise applicable standard begins to feed hazardous waste, triggering the beginning of startup, but has been burning non-hazardous solid waste for more than 15 minutes operating with CISWI as an otherwise applicable standard, simultaneously triggering the end of startup). To provide for a short period of startup while an HWC transitions out of an otherwise applicable standard mode of operation, the EPA is finalizing that, notwithstanding the previously discussed definitions of startup, transitioning from an otherwise applicable standard initiates a period of startup lasting no more than 15 minutes in duration.

The commenter is correct that if an HWC conducts startup or shutdown under an otherwise applicable standard, the unit is required to follow the startup and shutdown requirements of that standard. The EPA disagrees with the commenter's assertion that when a unit operates under otherwise applicable standards, the HWC NESHAP does not apply. The HWC NESHAP specifies that when a unit operates under otherwise applicable requirements,¹⁹⁵ the otherwise applicable requirements are applicable requirements under the HWC NESHAP and that the otherwise applicable requirements must be specified as a mode of operation in the source's Documentation of Compliance,¹⁹⁶ NOC,¹⁹⁷ and title V or other air permit application.¹⁹⁸ The EPA has previously and specifically explained that a source that elects to invoke the otherwise applicable requirements provision¹⁹⁹ to become temporarily exempt from the emission standards and operating requirements of the HWC NESHAP remains an affected source under the HWC NESHAP, and only the HWC NESHAP, until the source is no longer an affected source by meeting the requirements specified in Table 1 to 40 CFR 63.1200.²⁰⁰ The EPA

is retaining the sentence for clarity that the definitions of startup and shutdown in otherwise applicable standards apply if the HWC starts up or shuts down under a mode of operation representing an otherwise applicable standard.

c. Definition of Supplemental Fuel

Comment: A commenter pointed out that solid fuel boilers by necessity burn coal during startup and that under the proposed definition of startup, solid fuel boilers would be required to start up under CISWI rule as an otherwise applicable standard to allow the units to burn coal during startup. The commenter states that the solid fuel boilers could operate in a non-hazardous waste combustion mode under CISWI and later switch to a hazardous waste combustion mode. The commenter states that the transition period between CISWI and the HWC NESHAP is not allowed under the proposed rule because the proposed definition of supplemental fuel does not include coal. The commenter notes that the proposed definition does allow for other supplemental fuels as authorized in the SSM plan but says that the plan may not be approved within 180 days to allow coal as a supplemental fuel. The commenter suggests that the definition of supplemental fuels include coal and perhaps other clean fuels as defined in the Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP but restrict that use to solid fuel boilers and possibly other source categories (e.g., cement kilns) as needed.²⁰¹

Another commenter requested that, in keeping with the Portland Cement NESHAP, the definition of "supplemental fuel" should be revised as follows: "Supplemental fuel is defined as one or a combination of the following fuels: natural gas, synthetic natural gas, propane, other gas 1 fuels, distillate oil, syngas, ultra-low sulfur diesel, kerosene, hydrogen, refinery gas, liquified petroleum gas, non-hazardous traditional fuels once 1200 degrees Fahrenheit in the kiln has been achieved, or any other fuel authorized in the SSM plan."

Response: In response to comments, the EPA is finalizing specific allowances for other supplemental fuels for solid fuel boilers and additional fuels that can be burned during startup for cement kilns.

For solid fuel boilers only, the EPA is finalizing that coal is included in the

definition of supplemental fuel. Based on the information collected in the survey sent to owners and operators of HWCs, all HWC solid fuel boilers use coal during periods of startup. This means that coal combustion during startup represents the performance of the best-performing source.

For cement kilns, the EPA is finalizing that cement kilns may burn traditional fuels once the HWC achieves 1200 °F in the combustion chamber measured at a location that best represents, as practicable, the bulk gas temperature in the combustion zone.²⁰² This is the same as the requirements of the Portland Cement NESHAP, which determined that combustion of the primary kiln fuel once the kiln temperature reaches 1200 °F is a MACT work practice standard for cement kilns during periods of startup.²⁰³ The EPA is also finalizing a requirement that all APCDs must be operational before HWC cement kilns may feed traditional fuels, kiln feed, or any waste material that is not supplemental fuel, in keeping with the Portland Cement NESHAP.²⁰⁴ Similarly, the EPA is finalizing that all APCDs must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into any HWC.

d. SSM Plan Approval

Comment: Some commenters argued that obtaining approval of the SSM plan within 180 days is a requirement that could be difficult to comply with.

A commenter stated that the EPA is wrong to assume most facilities already have approved SSM plans or can get approval within 180 days and further stated that many facilities have submitted plans but still lack formal approval. The commenter said they are concerned that a facility could potentially be penalized if the permitting authority takes too long to approve a SSM plan. The commenter said that facilities can control when they submit a plan, but they cannot control how quickly the Agency reviews it. They argued that facilities should be allowed to keep operating after submitting the plan, as long as they continue responding to any follow-up questions. Because delays would be outside the facility's control, the commenter urged the EPA to revise the rule so that submitting the SSM plan, but not waiting for approval, counts as meeting the requirement. Similarly, another commenter pointed out the

¹⁹⁵ 40 CFR 63.1206(b)(1)(ii).

¹⁹⁶ 40 CFR 63.1211(c).

¹⁹⁷ 40 CFR 63.1207(j).

¹⁹⁸ 40 CFR 63.1209(q)(1).

¹⁹⁹ 40 CFR 63.1206(b)(1)(ii).

²⁰⁰ See, e.g., 70 FR 59402, 59498 (Oct. 12, 2005), 69 FR 21198, 21203 (Apr. 20, 2004), 67 FR 6968,

6979 (Feb. 14, 2002), 66 FR 35087, 35090, 35145 (July 3, 2001), and 64 FR 52828, 52904 (Sept. 30, 1999).

²⁰¹ 40 CFR part 63, subpart DDDDD.

²⁰² "Traditional fuels" is defined in 40 CFR 241.2.

²⁰³ See 40 CFR 63.1346(g)(2).

²⁰⁴ See 40 CFR 63.1346(g)(3).

need for additional time to accommodate any required amendments related to a revised SSM plan approved by the authorized state. The commenter also pointed out that as a new facility goes through the shakedown process and operators gain experience managing the new kiln, the SSM plan is likely to change with some frequency. The commenter added that the EPA's proposed 180-day compliance timeline for existing sources is insufficient to ensure compliance with the proposed supplemental fuel requirement. The commenter argued that the EPA had no basis to assume facilities already have or can obtain enough supplemental fuel, that these issues cannot be solved in a few months, and that the proposed timeline is not enough time for facilities to get approval for a facility-specific supplemental fuel.

Commenters suggested the following alternatives for the EPA's consideration for the final rule in lieu of requiring approval of the SSM plan within 180 days:

- Option #1—Instead of the proposed approval requirements, the regulated entities would be required to maintain the SSM plans with the AWFCO system information. The SSM plans would then be part of the facility's operating record. Regulated entities would then be required to share or provide them upon request by a state agency or by the EPA; or

- Option #2—If agency approval continues to be a requirement, to provide automatic approval of the SSM plan if the administrator does not respond within 45 calendar days of the original submittal and does not respond within 30 calendar days after receipt of any additional information; or

- Option #3—If the SSM plan approval takes more than 180 days after submittal, the SSM plan should be deemed approved, and the owner/operator remains responsible for answering any additional questions that the agency has after this 180-day period; or

- Option #4—Require facilities to comply with the SSM work practice and the details of its plan upon submittal, just as the regulations do with a NOC. If, because of the approval process, the permitting authority requires changes to the SSM plan, then the facility will comply with the revised plan once it is approved.

Response: The EPA agrees with the commenters that the owner or operator of a source can control the date they submit an SSM plan but not the date that the Administrator reviews or approves the SSM plan. The Administrator should notify the owner

or operator of approval or the intention to deny approval of the SSM plan within 90 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplemental information, and the owner or operator should ensure that they submit supplementary and additional information in a timely manner.²⁰⁵ Action or inaction on the part of the Administrator should not subject sources to the risk of noncompliance with the HWC NESHAP.

Accordingly, the EPA is finalizing that owners or operators of HWCs must postmark their SSM plans for approval within 180 days of the effective date of the final rule. Sources must begin complying with their SSM plan upon postmark while awaiting approval. If changes are made to the SSM plan as a result of the approval process, sources must begin complying with the revised SSM plan upon notification of approval.

e. AWFCO During Periods of SSM

Comment: A commenter said that the EPA correctly recognizes that “an exceedance of an OPL or emission standard interlocked with the AWFCO system is not a violation of the HWC NESHAP if the corrective measures prescribed in the SSM plan are correctly followed.”²⁰⁶

On the other hand, a commenter argued that 40 CFR 63.1206(c)(2)(v)(A)(2) and 40 CFR 63.1206(c)(2)(v)(B)(4) are unlawful because they require no more than compliance with the general-duty SSM plan during SSM periods. The commenter asserted that the plain text of these provisions would allow facilities to claim that any exceedance constitutes a malfunction and therefore does not constitute a violation, provided they follow their SSM plan. The commenter said that the EPA must delete or clarify these provisions to ensure that its SSM plan requirements do not entirely supplant the emission standards that apply during normal operations.

Response: The EPA recognizes that questions regarding the provisions in 40 CFR 63.1206(c)(2)(v)(A)(2) and 40 CFR 63.1206(c)(2)(v)(B)(4) are raised from time to time. The EPA has previously stated that these provisions apply during periods of SSM only; that is, during a period of startup or shutdown when burning hazardous waste or a period of malfunction, an exceedance of a continuously monitored emission standard or operating limit is not a violation if the operator correctly

follows their SSM plan.²⁰⁷ This interpretation is consistent with the regulatory text, given that the sections are entitled “Compliance with AWFCO requirements during malfunctions”²⁰⁸ and “Compliance with AWFCO requirements when burning hazardous waste during startup and shutdown.”²⁰⁹

In response to comment, the EPA is adding clarifying text in 40 CFR 63.1206(c)(2)(v)(A)(2) as shown below and reserving 40 CFR 63.1206(c)(2)(v)(B)(4). The EPA is promulgating that only the work practice standards for periods of SSM apply during periods of SSM, which means that the emissions limits and their OPLs are not applicable standards during periods of SSM unless they are specified as applicable in an approved SSM plan.²¹⁰ CEMS, Continuous Opacity Monitoring System (COMS), or CMS recording emissions or OPLs that do not meet the requirements for periods of normal operation are not a violation of the HWC NESHAP during periods of SSM unless otherwise specified in an approved SSM plan because the requirements for periods of normal operation do not apply during periods of SSM. The obligations for periods of startup and shutdown and periods of malfunction differ slightly because 40 CFR 63.1206(c)(2)(ii)(A) requires the SSM plan to describe potential causes of malfunctions that may result in significant releases of HAP and actions that the source is taking to minimize the frequency and severity of those malfunctions, and complying with the SSM plan requires that sources take those actions prior to the malfunction. The EPA is clarifying 40 CFR 63.1206(c)(2)(v)(A)(2) to read:

Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMS or operating limit specified under § 63.1209 after a malfunction has occurred is not a violation of this subpart if: (i) You took the actions to minimize the frequency and severity of the malfunction prescribed in the startup, shutdown, and malfunction plan prior to the malfunction and (ii) You take the corrective measures prescribed in the startup, shutdown, and malfunction plan in response to the malfunction.

The EPA is reserving 40 CFR 63.1206(c)(2)(v)(B)(4) because compliance with the SSM work practice

²⁰⁷ See 67 FR 6792, 6800 (Feb. 13, 2002) and 70 FR 59402 at 59497 (Oct. 12, 2005).

²⁰⁸ 40 CFR 63.1206(c)(2)(v)(A).

²⁰⁹ 40 CFR 63.1206(c)(2)(v)(B).

²¹⁰ See 40 CFR 63.1206(b)(1)(i).

²⁰⁵ See 40 CFR 63.1206(c)(2)(ii).

²⁰⁶ See 40 CFR 63.1206(b)(2)(v)(A)(2) and (B)(4).

standards are the only requirements for periods of startup and shutdown.²¹¹

The EPA is also reiterating that the governing definition of “malfunction” is “any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.”²¹² While an exceedance of an emission limit or OPL could indicate that a malfunction is occurring, an exceedance of a limit is not, by itself, a malfunction that triggers the work practice standard for periods of malfunction. After an exceedance of an emission limit or OPL that triggers the AWFCO system, owners or operators of HWCs must investigate the cause of the AWFCO system trigger.²¹³ The cause of the exceedance would determine whether the exceedance occurred during a period of malfunction and so whether the governing standard is the work practice standard for periods of malfunction or the emission limits for periods of normal operation.

4. What is the rationale for our final approach and final decisions for SSM provisions for the HWC NESHAP source category?

The EPA evaluated the comments on the EPA’s proposed work practice standards for periods of SSM. New standards for periods of SSM are necessary to ensure consistency with the requirement in *Sierra Club v. EPA* that CAA section 112 standards apply at all times. Because it is not feasible to prescribe or enforce an emission standard for periods of SSM, the EPA is finalizing work practice standards for periods of SSM based on the practices that best performers use to maximize their reductions in emissions during those periods. As explained at proposal, due to the timing of the D.C. Circuit decision and the court-ordered deadline for the HWC NESHAP RTR, the EPA continues to intend to address the impacts of the SSM Litigation Group decision in a future, separate action. More information and rationale concerning the work practice standards for periods of SSM are in the preamble to the proposed rule,²¹⁴ in section IV.D.3 of this preamble, and in the

comments and the EPA’s specific responses to the comments in the Comment Response Document, which is in the docket for this rulemaking.

E. Other Amendments to the HWC NESHAP

1. What other amendments did we propose for the HWC NESHAP source category?

On November 10, 2025, the EPA proposed amendments for the HWC NESHAP including electronic reporting provisions, allowing States to choose to exempt area sources not otherwise subject to title V air permitting requirements from such requirements on a case-by-case basis, and other technical corrections and clarifications. This section summarizes those proposals.

a. Electronic Reporting

The EPA proposed that owners and operators of HWC facilities must submit electronic copies of certain notifications already required by the HWC NESHAP through the EPA’s Central Data Exchange (CDX) using CEDRI. Specifically, the EPA proposed requirements for owners or operators of HWCs to submit performance test results and performance evaluation results of CEMS that include a RATA in the format generated through the use of the EPA’s ERT or an electronic file consistent with the extensible markup language (XML) schema on the ERT website.²¹⁵ The EPA also proposed requirements for owners or operators of HWCs to submit the notification of intent to comply, eligibility demonstrations, periodic SSM reports, and compliance progress reports as PDF uploads in CEDRI. For the NOC and the excess emissions and CMS performance reports and summary reports, the EPA proposed that owners and operators must use the appropriate spreadsheet template to submit information to CEDRI.

b. Title V Permits for Area Sources

The EPA proposed to allow States to exempt HWC area sources from title V permitting requirements based on the Administrator’s proposed determination under CAA section 502(a) that compliance with title V requirements is “unnecessarily burdensome.” The EPA proposed that State permitting authorities would have the option to exclude HWC area sources from the requirement to obtain a title V permit on a source-by-source basis unless the area source is otherwise required by law to

obtain a title V permit (e.g., is an area source of HAP but a major source of criteria pollutants).²¹⁶

c. Technical Corrections and Clarifications

The EPA proposed the following technical corrections and clarifications:

- Removing the requirement that CO or THC CEMS emission levels must be within the range of the average value to the maximum value allowed during the CfPT, unless the requirement is waived in the CfPT plan approval;²¹⁷
- Clarifying that operating parameter requirements may be incorporated in the title V permit or other air permit either directly or by reference;²¹⁸
- Clarifying that the reference to performance test is only to a CPT and not a CfPT and that the RATA must occur within 60 days of the CPT;²¹⁹
- Removing the requirement that HWC owners and operators install, calibrate, maintain, and operate a PM CEMS to demonstrate continuous compliance with the PM standard;²²⁰
- Removing references to the following methods that were not properly incorporated by reference and which have since expired: ASME QHO–1–1994, QHO–1a–1996, QHO–1–2004 for operator training;²²¹ ASTM D 6735–01 for measurement of HCl and chlorine gas;²²² and ASTM E–29–90 for rounding and significant figures;²²³
- Removing the outdated 12-month demonstration of compliance provision for incinerators, cement kilns, and lightweight aggregate kilns;²²⁴
- Updating definitions as indicated in the full text of proposed revisions to the HWC NESHAP placed in the docket upon proposal;²²⁵
- Removing the reference to the general provisions for performance test operating conditions²²⁶ in the section describing methods for determining compliance²²⁷ and replacing it with a reference within the HWC NESHAP;²²⁸
- Changing “effect” to “affect” in 40 CFR 63.1206(b)(7)(i)(B)(1);

²¹⁶ See the proposed 40 CFR 63.1(c)(2)(i) in Document ID No. EPA–HQ–OAR–2004–0022–0708.

²¹⁷ See 40 CFR 63.1207(g)(2)(i).

²¹⁸ See 40 CFR 63.1206(c)(1)(v).

²¹⁹ See appendix A to subpart EEE of part 63, section 5.

²²⁰ 40 CFR 63.1209(a)(1)(iii).

²²¹ See 40 CFR 63.1206(c)(6)(iii)(B).

²²² See 40 CFR 63.1208(b)(5) and 40 CFR 63.1215(f)(5).

²²³ See appendix A to subpart EEE of part 63, section 6.7.

²²⁴ 40 CFR 63.1207(c)(3).

²²⁵ See the proposed 40 CFR 63.1201(a) in Document ID No. EPA–HQ–OAR–2004–0022–0708.

²²⁶ 40 CFR 63.7(e)(1).

²²⁷ 40 CFR 63.1206(b)(2).

²²⁸ 40 CFR 63.1207(g).

²¹¹ See 40 CFR 63.1206(c)(10) and (11).

²¹² See 40 CFR 63.2.

²¹³ See 40 CFR 63.1206(c)(3)(v).

²¹⁴ 90 FR 50814 (Nov. 10, 2025).

²¹⁵ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

- Reserving 40 CFR 63.1206(b)(8) in accordance with removing the requirement that HWCs install and operate PM CEMS;
- Changing “µgm” to “µg” to align with standard convention where it appears in the rule;
- Clarifying that the “workplan” is the performance test plan;²²⁹
- Changing “or” to “and” in 40 CFR 63.1206(c)(6)(v)(A)(7);
- Correcting a cross-referencing error in 40 CFR 63.1206(c)(9)(ii)(C)(2)(iv) to reference paragraph (C)(2) instead of paragraph (B)(2);
- Removing the applicability of 40 CFR 63.7(e)(1) in 40 CFR 63.1207(a);
- Clarifying that the CMS performance evaluation plan in a CPT must only include CMS performance evaluation for parameters required in 40 CFR 63.1207(b)(2)(ii);²³⁰
- Revising 40 CFR 63.1207(f)(1)(xv), which was inadvertently left in the subpart when the EPA revised EPA Method 23 in March 2023²³¹ and replacing it with the CPT plan submission requirements associated with the HF work practice standard;
- Clarifying that records must be kept of operating conditions during performance testing;²³²
- Removing the option to use SW–846 Method 0023A to demonstrate compliance with the PCDD/PCDF standards effective three years after the publication date of the final rule;²³³
- Clarifying methods for measuring HCl and chlorine gas;²³⁴
- Removing a cross-reference to a reserved section;²³⁵
- Adjusting the numbering to account for the described changes;²³⁶
- Adding the work practice standard and OPLs for HF;²³⁷
- Revising the notification tables to reflect the proposed notification changes;²³⁸
- Revising the recordkeeping and reporting tables to reflect the proposed recordkeeping and reporting changes;²³⁹
- Adding a requirement that sources report if they fail to meet an applicable standard in the excess emissions and CMS performance report and summary report;²⁴⁰

- Clarifying recordkeeping requirements for periods of SSM and records to be kept for failures to meet an applicable standard;²⁴¹
- Correcting the web addresses for HCl and chlorine gas reference concentrations and acute reference exposure levels;²⁴²
- Correcting the web address of the EPA’s *Air Toxics Risk Assessment Reference Library, Volume 2: Facility-Specific Assessment*;²⁴³
- Revising instructions on significant figures and intermediate use in calculations to align with existing EPA policy;²⁴⁴
- Revising the general provisions applicability table to reflect proposed changes to general provisions applicability;²⁴⁵
- Revising “NIST traceable calibration standards” to “EPA traceability protocol calibration gases” to improve consistency across NESHAP and to better match the intent of the requirement;²⁴⁶
- Revising “yearly” to “annually” for consistent terminology;²⁴⁷
- Clarifying who must approve a request to use alternative spans and ranges;²⁴⁸
- Clarifying and adding options for the moisture correction procedure;²⁴⁹ and
- Removing the extra word “expressed” in section 6.6 of the appendix to subpart EEE of part 63.

2. How did the other amendments for the HWC NESHAP source category change since proposal?

The EPA is finalizing the electronic reporting requirements as proposed. The EPA is also finalizing that title V permitting authorities, including but not limited to States, may choose to exempt area sources not otherwise subject to title V permitting requirements from the requirement to obtain a title V permit on a case-by-case basis. The EPA is finalizing the following changes to other technical corrections and clarifications:

²⁴¹ 40 CFR 63.1211(e).

²⁴² 40 CFR 63.1215(b).

²⁴³ 40 CFR 63.1215(c)(4)(i).

²⁴⁴ Memorandum *Performance Test Calculation Guidelines* (John Seitz, 1990) available in the docket for this action (Docket ID No. EPA–HQ–OAR–2004–0022); see changes in 40 CFR 63.1216(d), 63.1217(d), 63.1218(d), 63.1219(d), 63.1220(f), and 63.1221(d).

²⁴⁵ Table 1 to subpart EEE of part 63.

²⁴⁶ See section 2 of the appendix to subpart EEE of part 63.

²⁴⁷ See section 5 of the appendix to subpart EEE of part 63.

²⁴⁸ See section 6.3.5 of the appendix to subpart EEE of part 63.

²⁴⁹ See section 6.4.1 of the appendix to subpart EEE of part 63.

requiring a RATA within 180 days before the CPT rather than the proposed 60 days; requiring that the initial demonstration of compliance commences within six months of the compliance date rather than the report being postmarked in the same timeframe; modifying the proposed definition of postmark to be inclusive of more delivery methods; amending the definition of by-pass duct to submit for the Administrator’s determination through an applicability determination request; clarifying that the DRE test methodology will be determined in the CPT test plan; cross-referencing HAP list alterations instead of listing them individually in the HWC NESHAP;²⁵⁰ correcting an erroneous cross reference in 40 CFR 63.1207(f)(1)(xvii); and clarifying what OPLs do not apply when hazardous waste is not in the combustion chamber.²⁵¹ All other technical corrections and clarifications are being finalized as proposed.

3. What key comments did we receive on other amendments for the HWC NESHAP source category?

This section provides summaries of and responses to the key comments received regarding the EPA’s proposed changes to title V permitting requirements for area sources and technical corrections and clarifications. Other comment summaries and the EPA’s responses regarding electronic reporting and technical corrections and clarifications are in the Comment Response Document, which is in the docket for this rulemaking.

a. Title V Permits for Area Sources

Comment: Commenters supported the EPA’s proposal to allow States to exempt HWC area sources from title V permitting requirements and agreed with the EPA that State permitting is “essentially equivalent” to Federal requirements and “offer[s] no additional compliance benefits.” However, a commenter noted that while States exempting HWC area sources from title V (under the proposed rule) could still enforce non-title V permits incorporating NESHAP requirements, the approach only works if all States apply the exemption uniformly; otherwise, some sources could gain an unfair competitive or environmental advantage. Another commenter said they support the EPA’s proposal related to title V permitting requirements as long as emission limits and work

²⁵⁰ See 40 CFR part 63, subpart C—List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

²⁵¹ 40 CFR 63.1209(j).

²²⁹ 40 CFR 63.1206(c)(5)(ii).

²³⁰ 40 CFR 63.1207(e)(1)(i).

²³¹ 88 FR 16732 (Mar. 20, 2023).

²³² 40 CFR 63.1207(g).

²³³ 40 CFR 63.1208(b)(1)(i).

²³⁴ 40 CFR 63.1208(b)(5).

²³⁵ 40 CFR 63.1208(b)(7).

²³⁶ 40 CFR 63.1208(b).

²³⁷ 40 CFR 63.1209(s).

²³⁸ 40 CFR 63.1210(a).

²³⁹ 40 CFR 63.1211.

²⁴⁰ 40 CFR 63.1211(a).

practice standards remain fully enforceable and the EPA clearly defines expectations for State oversight and consistency.

Other commenters opposed exempting area source HWCs from title V permitting requirements or giving States the option to make the exemption. Commenters argued that the CAA requires both major and area sources to obtain title V permits and that the EPA may only grant exemptions when compliance is “impracticable, infeasible, or unnecessarily burdensome.” A commenter said that title V permits are “critically important” because they consolidate all applicable air requirements into one enforceable document and enhance transparency, public involvement, and continuous compliance. The commenter added that communities depend on title V’s monitoring, transparency, and compliance requirements, which give people information about where sources are, what they emit, and the standards they must meet, and provide a way for the public to be heard so HWCs are held accountable. The commenter concluded that losing these protections would be a major setback for public health.

A commenter emphasized that the EPA’s own four factor test, and the CAA’s legislative history, requires the agency to consider the benefits of title V, the burdens, whether costs are justified, the availability of other compliance mechanisms, and whether an exemption would harm public health or the environment.²⁵² The commenter stressed that title V provides “many benefits,” including stronger public participation, greater transparency about “where sources are, what they are emitting, and the standards they are subject to,”²⁵³ and better assurance of compliance because permits consolidate all requirements into “one enforceable permitting document.”²⁵⁴ The commenter noted that public participation and the EPA oversight are inconsistent and often lacking in non-title V State permitting, and that the EPA itself has previously lauded the “benefits of the public involvement opportunities afforded by the title V permit program,” noting that many area sources “are the ones in which the public is generally most interested.”²⁵⁵

The commenter argued that despite these benefits, and despite the EPA’s prior finding that title V was not impracticable, infeasible, or

unnecessarily burdensome,²⁵⁶ the EPA now proposes to call title V “unnecessarily burdensome” under the four-factor balancing test based on claims of minimal added benefits and additional costs. The commenter pointed out that, even under the EPA’s proposed rule, some HWC area sources would still need title V permits for other reasons, and that any source transitioning out of title V would still have to incorporate NESHAP requirements into its RCRA permit.

The commenter suggested that at a minimum, the EPA not exempt synthetic area sources, or allow States to exempt synthetic area sources, from title V permitting given that is the approach the EPA has taken in other rulemakings.²⁵⁷

Response: The EPA acknowledges some commenters’ support for allowing States to exempt area sources from title V permit requirements on a case-by-case basis. The EPA affirms that all sources must comply with the applicable requirements of the HWC NESHAP regardless of what type of air permit they hold, and that the EPA continues to be able to enforce the requirements of the HWC NESHAP in the absence of a title V permit. The EPA also agrees that some area sources of HAP would still be required to have a title V permit, *e.g.*, if they are a major source of criteria pollutants, and that sources exempt from title V permit requirements would need to incorporate air requirements into its RCRA permit.

The EPA disagrees with the commenter that allowing States to choose whether they exempt sources on a case-by-case basis can lead to competitive advantage for some sources, given that all sources must comply with the applicable requirements of the HWC NESHAP regardless of whether they have a title V or other State air permit, meaning that no area source is advantaged over another. The EPA also disagrees that title V permits for area sources contain monitoring, transparency, and compliance requirements that neither the HWC NESHAP nor the RCRA requires. As the EPA said in the preamble to the proposed rule, the compliance requirements in the HWC NESHAP and part 63 general provisions are substantially equivalent to the title V

monitoring, recordkeeping, and reporting requirements.²⁵⁸ Regarding transparency and the opportunity for public participation, the HWC NESHAP has public participation requirements that are not tied to the title V permit process, including required community notifications when a new unit starts up,²⁵⁹ an HWC plans a performance test,²⁶⁰ an HWC petitions to waive a performance test,²⁶¹ and a source files a RCRA permit application or permit modification request to construct a new HWC.²⁶² The EPA also requires all HWCs to have a RCRA permit, which has strong public participation requirements in the permitting process.²⁶³ These requirements offer the public opportunities for engagement and participation outside of the title V permit process that may not be required for other CAA source categories and provide the public an opportunity for awareness about the activities of the HWC.

As the EPA stated in the preamble to the proposed rule, the Agency based our previous finding that title V permitting was not impracticable, infeasible or unnecessarily burdensome on the fact that HWCs are required to have a RCRA permit without explaining why complying with RCRA permitting requirements meant that title V permit was not impracticable infeasible or unnecessarily burdensome for area sources of HWC.²⁶⁴ In contrast, in the 2025 proposal, the EPA proposed that title V permitting was unnecessarily burdensome on area sources after weighing the four factors that the EPA has previously considered in determining whether the “unnecessarily burdensome” criterion in CAA section 502(a) is met.²⁶⁵

In the HWC NESHAP 2005 final rule, the EPA also concluded that title V permit requirements were appropriate for area sources given the toxic nature of PCDD/PCDF, Hg, POM, and PCBs and the importance of affording opportunity for public participation.²⁶⁶ However, the EPA does not consider that the emissions of HAP regulated pursuant to CAA section 112(c)(6) to per se require title V permitting for all area sources,

²⁵⁸ See 40 CFR 70.6 and 71.6 for the title V monitoring, recordkeeping, and reporting requirements.

²⁵⁹ 40 CFR 63.1210(b)(2) and 40 CFR 63.1210(c).

²⁶⁰ 40 CFR 63.1207(e)(2).

²⁶¹ 40 CFR 63.1207(e)(3)(iv).

²⁶² 40 CFR 63.1212(b).

²⁶³ See 40 CFR parts 124 and 270.

²⁶⁴ 90 FR 50814, 50847 (Nov. 10, 2025) (citing 69 FR 21198, 21325 (Apr. 20, 2004)).

²⁶⁵ *Id.* at 50847–49.

²⁶⁶ See Document ID No. EPA–HQ–OAR–2004–0022–0438, section 2.1.

²⁵² 70 FR 75320 (Dec. 19, 2005).

²⁵³ 88 FR 22790, 22851 n.67 (Apr. 13, 2023).

²⁵⁴ 64 FR 52828, 52980 (Sept. 30, 1999).

²⁵⁵ *Id.*

²⁵⁶ See, *e.g.*, 70 FR 59402, 59523 n.252 (Oct. 12, 2005).

²⁵⁷ See 74 FR 56008, 56037 (Oct. 29, 2009) (“In fact, our decision to not exempt synthetic area sources that installed add-on controls was based, in part, on our determination that the additional public participation and oversight attendant to title V permitting was appropriate.”); see also 77 FR 4522, 4526–27 (Jan. 30, 2012).

and instead the Agency evaluates title V permit requirements for each area source category separately. For example, the EPA has exempted area source industrial, commercial, and institutional boilers, which were listed under CAA section 112(c)(6) for PCDD/PCDF, Hg, and POM,²⁶⁷ from the requirement to obtain a title V permit.²⁶⁸ The HWC NESHAP includes additional public participation requirements, which are more robust than the title V public participation requirements, to align with RCRA public participation requirements.²⁶⁹ Incorporating air emission requirements in the RCRA permit and RCRA's full public participation process fulfills the original intent of the HWC NESHAP's public participation requirements. Weighed together, the EPA finds that neither the toxicity of the HAP emitted from area source HWCs nor the public participation requirements outweigh the additional burden of title V permitting requirements on area sources.

The EPA notes that CAA section 112 does not define "synthetic" area sources and instead classifies all sources as major or area sources of HAP. The EPA evaluates each area source category separately to determine whether title V permit requirements are warranted. The commenters cited the NESHAP for Chemical Manufacturing Area Sources (CMAS) as an example where the EPA had required synthetic area sources to obtain title V permits. The EPA articulated distinguishing factors specific to CMAS that led the Agency to decide not to exempt some area sources from title V permitting requirements, including that there were a large number of CMAS synthetic area sources (estimated 75) that reduced their HAP emissions to below the major source threshold by installing APCDs which were large facilities with comprehensive compliance programs in place because their uncontrolled emissions would far exceed the major source threshold (estimated that at least 10 percent of synthetic area sources had uncontrolled HAP emissions over 100 tpy).²⁷⁰ The EPA also articulated that public involvement and compliance assurance requirements through title V were important to ensure that the sources were maintaining their emissions at the area source level and that the burden was not significant because the facilities are generally larger and more

sophisticated than natural area sources.²⁷¹

The reasons that the EPA did not exempt certain synthetic area CMAS sources from the requirements to obtain a title V permit do not apply to HWC NESHAP synthetic area sources. First, as discussed in section 7.1.1 of the Comment Response Document, the EPA identified 13 area sources, natural and synthetic, that could be candidates for exemption from title V permitting requirements. The 13 or fewer synthetic area sources do not represent a large number of synthetic area sources. Second, the EPA does not have data demonstrating that HWC synthetic area sources have uncontrolled emissions that would far exceed the major source threshold, and the commenters did not provide such information. Even if some HWC synthetic area sources were to have large potential uncontrolled emissions, the EPA expects that the title V permitting authority would consider this in their case-by-case decision about whether a certain area source can be exempt from title V permitting requirements. Third, as discussed previously in this section of this preamble, both the HWC NESHAP and RCRA permitting process have public participation requirements independent of title V requirements. Fourth, the HWC NESHAP contains independent compliance assurance requirements (e.g., notifications of excessive exceedances) and, as discussed in the proposal preamble, the compliance requirements in the HWC NESHAP and part 63 general provisions are substantially equivalent to the monitoring, recordkeeping, and reporting requirements of the title V program and commenters did not provide counterexamples. Additionally, while the EPA decided to require that some CMAS synthetic area sources obtain a title V permit, the Agency also decided that in other cases, e.g., area source industrial, commercial, and institutional boilers, synthetic area sources could be exempt from the requirement to obtain a title V permit.²⁷² This highlights that the decision to exempt area sources from the requirement to obtain a title V permit is a source category-specific determination balancing the four factors based on facts specific to each source category.

Pursuant to CAA section 502(a), the EPA is finalizing its proposal that title V permitting is "unnecessarily burdensome" for HWC area sources and

that title V permitting authorities may exempt HWC area sources from title V permitting requirements. As a clarification, the EPA is finalizing that title V permitting authorities, not just States as proposed, may choose to whether to exempt area sources from title V permitting requirements on a case-by-case basis. This clarification encompasses situations where an entity other than a State is the title V permitting authority for an HWC. Other entities could include the EPA, a Tribal government, or a local air agency. This clarification ensures that the HWC NESHAP regulates all area sources consistently regardless of the identity of the permitting authority.

b. Technical Corrections and Clarifications

Comment: A commenter disagreed with the EPA's proposal that a RATA is only required during a CPT and that the RATA must occur within 60 days of the CPT. The commenter stated that the RATA merely needs to be conducted annually, and the EPA must discard the proposed clarification. The commenter stated that CEMS are subject to general quality assurance control requirements and that if the existing quality assurance cycle requirements are sufficient to declare the monitor(s) certified for accuracy, additional quality assurance requirements should not be necessary during a test even occurring within the quality assurance cycle.²⁷³ The commenter noted additional burden and CPT/RATA contractor scheduling concerns and stated that the EPA identified no benefit for this proposed change.

Two commenters were concerned about the EPA's proposed clarification that a RATA must be performed within 60 days of every CPT. One commenter thought that this timeline would be appropriate in most cases, but identified potential situations, such as test postponements or test interruptions, where a delay would cause the test to take place outside the 60-day window. The commenter pointed out that some States allow a RATA to be completed up to 180 days before the CPT. The commenter suggested amending the proposed language in appendix A to subpart EEE of part 63, section 5 to state that the RATA must occur within 60 days of the CPT, or as approved by the permitting authority. Another commenter suggested that the EPA should provide up to 120 days of time for the owner/operator to conduct

²⁶⁷ 80 FR 31470 (June 3, 2015).

²⁶⁸ See 40 CFR 63.11194(f) and 76 FR 15554, 15578 (Mar. 21, 2011).

²⁶⁹ 70 FR 59402, 59520 (Oct. 12, 2005).

²⁷⁰ 74 FR 56008 (Oct. 29, 2009).

²⁷¹ *Id.*

²⁷² See 40 CFR 63.11194(f) and 76 FR 15554, 15578 (Mar. 21, 2011).

²⁷³ See Appendix A to 40 CFR part 63, subpart EEE and 40 CFR part 60, appendix F procedure 1 for general quality assurance control requirements.

RATA for O₂, CO, and hydrocarbon CEMS. The commenter said that this would allow enough time for sites to plan for and implement multiple tests within the same year. The commenter added a suggestion that if a RATA has been completed within one year prior to the performance test, the preceding RATA should be acceptable, and a follow-up RATA should not be required.

Response: The EPA disagrees with the commenter suggesting that no changes are necessary and that the current language of the HWC NESHAP does not, prior to this rulemaking, require a RATA with the CPT. Appendix A section 5 of 40 CFR part 63 subpart EEE states, “When a performance test is also required under § 63.1207 to document compliance with emission standards, the RATA must coincide with the performance test.” In the proposal and the final rule, the EPA is clarifying the definition of “coincide” which has been interpreted differently by implementing agencies.

The EPA does agree with the commenters that the 60-day timeline is more restrictive than necessary but disagrees with the commenter on additional timelines for permitting authorities as suggested by the text “or as approved by the permitting authority” because the goal is certainty and clarity. In response to comments, the EPA is finalizing an updated requirement for the RATA to be conducted up to 180 days prior to the CPT.

Comment: One commenter pointed out that the definition of “by-pass duct” allows the Administrator to determine whether a device is a by-pass duct on a “case-by-case basis.”²⁷⁴ The commenter explained there is a reluctance to review and approve case-by-case requests, even in States with delegated authority. The commenter stated that this reluctance makes it difficult and sometimes impossible for facilities to take advantage of the case-by-case option. The commenter requested that the EPA issue guidance on making such determinations to delegated agencies, so the regulated community can take advantage of the regulation’s intended flexibility.

Response: In response to this comment, the EPA is clarifying in the definition of “by-pass duct” that requesting an applicability determination is the appropriate mechanism to submit a request to the Administrator for a determination that a device is a by-pass duct. The EPA agrees with the commenter that this clarification will assist the regulated

community in taking advantage of the HWC NESHAP’s intended flexibility.

Comment: One commenter asserted that all standards and OPLs should apply at all times unless the combustor is complying with an “otherwise applicable requirement.”²⁷⁵ The commenter concluded that the current provisions are adequate for HW incinerators and liquid fuel boilers citing their own experience and explaining that HW feed cuts off and combustors burn natural gas or another auxiliary fuel to commence shutdown or maintain temperature in hot standby. The commenter pointed out that hazardous waste incinerators and liquid fuel boilers do not have otherwise applicable requirements in 40 CFR part 63.

Two commenters asserted that HWC cement kilns comply with the HWC NESHAP at all times, but that the applicability of OPLs varies based on the mode of operation. Three commenters requested additional language in the HWC NESHAP to provide additional clarity to owners and operators when operating under different modes of operation. A commenter supported clarifying the HWC NESHAP with respect to which emission limits and OPLs apply when hazardous waste is not in the combustion chamber and the combustor is not complying with an otherwise applicable requirement.²⁷⁶ Another commenter suggested that the EPA should include a new condition explicitly stating that the HWC NESHAP applies at all times except during SSM periods as well as when hazardous waste is not in the combustor and the owner or operator demonstrates compliance with any other applicable regulations via an NOC. A different commenter referenced comments made to the EPA in 2002 requesting a revision to the HWC NESHAP to explicitly waive AWFCO requirements when hazardous waste was not in the kiln and the EPA’s response that no regulatory revisions were needed because applicable provisions after the expiration of hazardous waste residence time were self-evident. However, the commenter challenged this conclusion highlighting recent comments from certain stakeholders and requested that the EPA codify additional language stating that OPLs and the AWFCO system requirements do not apply when hazardous waste is not in the combustor. Two of the commenters

provided example regulatory language for the EPA to consider.

Response: The EPA acknowledges that there is confusion regarding applicable emission standards and OPLs when an HWC is not burning hazardous waste. In response to comments, the EPA is clarifying the monitoring requirements for DRE to state that HWCs must comply with OPLs established pursuant to the monitoring requirements for DRE at all times that hazardous waste remains in the combustion chamber.²⁷⁷ Additionally, HWCs are not required to comply with OPLs established pursuant to the monitoring requirements for DRE when there is no hazardous waste remaining in the combustion chamber.

According to the applicability of the HWC NESHAP,²⁷⁸ as amended by this final rule, the emission standards and operating requirements of the HWC NESHAP apply at all times except: (1) during periods of SSM, when only the SSM work practice standards apply and (2) when hazardous waste is not in the combustion chamber and the owner or operator has documented that they are complying with all “otherwise applicable requirements and standards” promulgated under CAA sections 112 or 129.²⁷⁹ Operating under an otherwise applicable standard must be specified as a mode of operation in the Documentation of Compliance, NOC, and title V permit application.²⁸⁰ Given the existing notification requirements, the EPA does not see a need to modify regulatory language to specify demonstrating compliance with an otherwise applicable requirement by means of a NOC.

The EPA provides as a regulatory flexibility²⁸¹ the ability for an HWC to choose to operate in an otherwise applicable requirement mode of operation.²⁸² Any standard promulgated under CAA sections 112 or 129 that would be applicable to the HWC if the unit never burned hazardous waste can function as an otherwise applicable standard, including but not limited to the Portland Cement NESHAP, the major source Industrial, Commercial, and Institutional Boilers and Process

²⁷⁷ 40 CFR 63.1209(j).

²⁷⁸ 40 CFR 63.1206(b)(1).

²⁷⁹ The HWC NESHAP establishes the requirements for “otherwise applicable requirements and standards” modes of operation at 40 CFR 63.1206(b)(1)(ii) and 40 CFR 63.1209(q). For more information about otherwise applicable requirement modes of operation, see 70 FR 59402, 59498 (Oct. 12, 2005).

²⁸⁰ 40 CFR 63.1209(q)(1).

²⁸¹ 40 CFR 63.1206(b)(1)(ii).

²⁸² See 40 CFR part 63, subpart LLL; 40 CFR part 63, subpart DDDDD; and, e.g., 40 CFR part 60, subpart CCCC, respectively.

²⁷⁴ See 40 CFR 63.1201.

²⁷⁵ See 40 CFR 63.1206.

²⁷⁶ See 40 CFR 63.1206(b)(1)(ii).

Heaters NESHAP, and CISWI.²⁸³ Commenters have indicated difficulty or impossibility in switching between the HWC NESHAP and the Portland Cement NESHAP. It is worth noting that owners and operators of HWC cement kilns can choose to operate under the requirements of the HWC NESHAP at all times. In the scenario where hazardous waste is not in the combustion chamber of an HWC and the HWC is not demonstrating compliance with all otherwise applicable requirements, all emission standards and OPLs of the HWC NESHAP continue to apply except as otherwise stated in the rule (e.g., DRE, AWFCO system requirements).

Regarding DRE, the OPLs associated with DRE do not apply when hazardous waste is not in the combustion chamber.²⁸⁴ The EPA is clarifying in this final rulemaking that the OPLs that do not apply are those established pursuant to the monitoring requirements for DRE.²⁸⁵ However, OPLs regarding minimum combustion chamber temperature, maximum flue gas flowrate or production rate, or maximum hazardous waste feedrate may continue to apply if the OPL is applicable to multiple standards. When an HWC must establish an OPL applicable to multiple standards, such as a minimum combustion chamber temperature as required for the DRE and PCDD/PCDF standards, the HWC can demonstrate compliance with both standards either simultaneously or in two independent tests.²⁸⁶ If the HWC demonstrates compliance simultaneously, the OPL is established pursuant to both applicable monitoring requirements. If the HWC does not demonstrate compliance simultaneously, then the most stringent limit applies because complying with the more stringent value of the OPL also complies with the less stringent value of the OPL. In the case of an HWC with an OPL that is applicable to DRE and another emission limit, the OPL established pursuant to the other emission limit will continue to apply when there is no hazardous waste remaining in the combustion chamber because the operating parameter is no

longer applicable to multiple applicable standards. For example, if an HWC establishes minimum combustion temperature in two tests or test conditions (one for DRE compliance and one for PCDD/PCDF compliance) and the minimum combustion temperature for DRE is more stringent, the source will use the DRE combustion temperature OPL when there is hazardous waste in the combustion chamber; however, for periods when there is no hazardous waste remaining in the combustion chamber, the minimum combustion temperature established in the PCDD/PCDF test or test condition becomes the applicable OPL. In the same scenario except that the source established the temperature in a single test condition, the same OPL would apply regardless of whether there is hazardous waste remaining in the combustion chamber because the PCDD/PCDF OPL remains applicable in both cases. It is worth noting that some HWCs have chosen to establish separate modes of operation demonstrating compliance with the HWC NESHAP when hazardous waste is and is not remaining in the combustion chamber in order to establish separate sets of OPLs for those modes of operation.

Regarding the request for additional language on AWFCO system requirements when hazardous waste is not in the combustor, HWCs are not required to trigger an AWFCO when hazardous waste is not in the combustion chamber. Triggering an AWFCO requires the owner or operator to cut off hazardous waste feed to the HWC. If no hazardous waste is in the combustion chamber, the owner or operator has already cut off hazardous waste feed to the HWC. The source must refrain from restarting hazardous waste feed until the operating parameters and emission levels are within the specified limits after an AWFCO.²⁸⁷ The EPA is not adding any additional language in response to comment.

Comment: Two commenters asserted that CO/THC is not an emission limit but an OPL indicative of DRE and good combustion practices. One commenter stated that DRE is inapplicable when hazardous waste is not in the combustion chamber. Another commenter noted that OPLs are not and were not intended to be emission limits, highlighting the EPA's allowance to measure OPLs mid-kiln instead of at the stack. The commenter concluded that CO/THC and DRE monitoring does not provide useful information in non-waste combusting modes and therefore does not apply during a mode of operation

when hazardous waste is not in the combustion chamber.

Response: The EPA agrees with the commenter that the HWC NESHAP does not require HWCs to operate within OPLs established pursuant to the DRE operating limits when hazardous waste is not in the combustion chamber.²⁸⁸ However, the EPA disagrees with the commenters that CO/THC is an OPL related to DRE and that CO/THC monitoring does not provide useful information when an HWC is not combusting hazardous waste.

In 1999, the EPA promulgated both the CO/THC emission standard and the DRE emission standard as surrogate MACT emission standards in lieu of individual standards for non-PCDD/PCDF organic HAP.²⁸⁹ In 2005, the EPA readopted the CO/THC and DRE emission standards as surrogates for non-PCDD/PCDF organic HAP.²⁹⁰ At the time, the Agency stated that they were not work practice standards.²⁹¹ The applicable regulatory text indicates that CO/THC is an emission standard. For example, in describing the replacement emission standards for cement kilns, CO and THC are listed as an emission limit for existing sources²⁹² and for new sources.²⁹³ DRE is listed as a separate emission limit.²⁹⁴ In addition, when listing the OPLs that must be established for DRE, the regulatory text mentions neither CO nor THC.²⁹⁵ Also, when describing monitoring requirements, the HWC NESHAP states that HWCs “must use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the *carbon monoxide and hydrocarbon standards*” under the HWC NESHAP (emphasis added).²⁹⁶

The EPA also disagrees with the commenter that data for CO and THC does not provide useful information when sources are not burning hazardous waste. Monitoring CO and THC provides useful information in any combustion context, not just when combusting hazardous waste because they are indicators of good combustion

²⁸³ The applicability of the HWC NESHAP does not depend on whether a source is burning hazardous waste at any given time. Instead, as indicated in 40 CFR 63.1200 and 40 CFR 63.1201, HWCs are combustors that burn hazardous waste at any time and continue to be HWCs until they cease burning hazardous waste, initiate RCRA closure requirements, begin complying with all other applicable standards of 40 CFR part 63, and notify the Administrator that they are no longer an affected source under the HWC NESHAP.

²⁸⁴ 40 CFR 63.1209(j).

²⁸⁵ See 40 CFR 63.1209(j)(1)–(4).

²⁸⁶ See 40 CFR 63.1209(i).

²⁸⁷ 40 CFR 63.1206(c)(3)(iii).

²⁸⁸ 40 CFR 63.1209(j).

²⁸⁹ 64 FR 52828, 52832, 52847–52 (Sept. 30, 1999).

²⁹⁰ 70 FR 59402, 59501 (Oct. 12, 2005) (“As discussed in the 1999 rule, nondioxin/furan organic hazardous air pollutants are controlled by the DRE standard and the carbon monoxide and hydrocarbon standards. See 64 FR at 52848–52852. This standard was not reopened in the present rulemaking.”).

²⁹¹ *Id.* at 59463–64.

²⁹² 40 CFR 63.1220(a)(5).

²⁹³ 40 CFR 63.1220(b)(5).

²⁹⁴ 40 CFR 63.1220(c).

²⁹⁵ 40 CFR 63.1209(j).

²⁹⁶ 40 CFR 63.1209(a)(1)(i).

efficiency.²⁹⁷ This is why the EPA has established requirements for CO or THC in many combustion-related rules, including the Portland Cement NESHAP and all regulations established pursuant to CAA section 129, which governs the combustion of non-hazardous waste burning combustors.

4. What is the rationale for our final approach and final decisions for the other items and technical corrections for the HWC NESHAP source category?

The EPA is promulgating these changes to electronic reporting provisions, title V permitting requirements for area sources, and technical corrections and clarifications to minimize reporting burden while increasing transparency, eliminate unnecessary burden on area sources, remove requirements that were never implemented or routinely waived, diminish disparities in HWC permitting, remove expired or outdated content, and improve correctness and clarity of current requirements. Based on the comments received, the EPA is generally finalizing all proposed requirements along with other corrections or clarifications requested by commenters. In some instances, the EPA received comments that led to changes between the proposed and final rules. The EPA's rationale for these changes is in section IV.E.3 of this preamble and in the Comment Response Document, which is in the docket for this rulemaking.²⁹⁸

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

The HWC source category includes incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and HCl production furnaces that combust hazardous waste. Currently, the EPA has identified 163 HWCs at 92 facilities owned by 57 parent corporate entities and the Federal government. Of these 163 HWCs, 62 are incinerators, 61 are liquid fuel boilers, 17 are HCl production furnaces, 14 are cement kilns, seven are solid fuel boilers, and two are lightweight aggregate kilns. The EPA estimates that

four new HWCs may begin operations in the next five years.

B. What are the air quality impacts?

The EPA does not anticipate that the amendments to this subpart will materially impact air quality. Analysis of the collected data indicates that all subject sources are currently achieving the emission limits for HF and HCN, and so the amendments would not result in any changes to air quality. In addition, the EPA based work practice standards for SSM on practices already utilized by industry and thereby do not affect the stringency of standards. The addition of electronic reporting, changes to title V permit requirements, and other ministerial actions also do not impact the stringency of the standards.

C. What are the cost impacts?

The EPA expects the revisions to the HWC NESHAP to have minimal cost impacts. The costs are associated with initial and periodic emissions performance testing, electronic reporting, and reviewing the revised provisions. The EPA expects 92 facilities to be affected by the rule. The EPA anticipates that all facilities can comply with the rule without the installation of any new APCDs. Furthermore, the EPA expects that compliance testing for new emission limits will coincide with currently required emissions testing, requiring minimal extra costs. The EPA also estimates cost savings associated with changes to title V requirements. The EPA estimates that the total cost per facility in year one (2027) is approximately \$3,500 (2024\$) and that the subsequent annual cost per facility is \$2,400 (2024\$) for each of the following two years.

For these 92 affected existing facilities, the EPA estimates that the total cost of the action over years one through three is \$760,000 (2024\$). The analysis for this rule also assumes that three new facilities will begin operation with estimated cost savings of approximately \$180,000 to \$190,000 (2024\$) per facility in the first year of operation, primarily associated with the removal of the PM CEMS requirement, reducing the three-year incremental cost of this rulemaking to \$203,000 (2024\$), or an average annual cost of \$65,000 (2024\$) per year. These costs do not account for the incremental burden for the EPA. After accounting for EPA burden, the Agency estimates that the total annual cost of this action, averaged over years one through three, is \$65,000 (2024\$). For more information on these estimates, please refer to the cost

memorandum²⁹⁹ prepared for this action as well as the economic impact analysis³⁰⁰ for this rule.

The EPA also estimated the total estimated compliance costs for the period 2027–2041 period in terms of their present value (PV) as well as their equivalent annualized value (EAV), which represents a flow of constant annual values that, had they occurred in each year, would yield a sum equivalent to PV. The PV of the final rule is \$2.4 million at a 3 percent discount rate and \$1.8 million at a 7 percent discount rate. The EAV of the final rule is \$200,000 at a 3 percent discount rate and \$200,000 at a 7 percent discount rate.

D. What are the economic impacts?

The EPA calculates the economic impact of this action as the annual cost as a percent of revenues for affected entities. Using the total annual costs for this action averaged over years one through three, the EPA does not expect any affected entity to incur an annual cost of more than 0.16 percent of their revenues. Based on the EPA's analyses, the Agency expects nine affected parent entities to have cost savings associated with this final rule. Given these results, the EPA expects that the economic impact of this action should be small.

E. What are the benefits?

As explained in section V.B of this preamble, the EPA does not estimate that this action would lead to material changes in HAP emissions from the HWC source category. Given this outcome, the EPA does not believe that there would be monetized benefits, positive or negative, based on emissions changes expected from this final rule.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not

²⁹⁷ See, e.g., 70 FR 59402, 59461 (Oct. 12, 2005); see also *Sierra Club*, 884 F.3d at 1193 (“Because CO results from incomplete oxidation, more complete combustion leaves less CO (and more [carbon dioxide]) in the resulting emissions stream. By the same token, the more complete the combustion, the lower the emission of organic HAPs—carbon-based molecules that have not been fully oxidized.”).

²⁹⁸ See Docket ID. No. EPA–HQ–OAR–2004–0022.

²⁹⁹ See the memorandum *Hazardous Waste Combustors (HWC) NESHAP—Cost Impacts of Final Amendments*, which is available in the docket for this rule (Docket ID No. EPA–HQ–OAR–2004–0022).

³⁰⁰ See the memorandum *Economic and Small Entity Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors Risk and Technology Review*, which is available in the docket for this rule (Docket ID No. EPA–HQ–OAR–2004–0022).

submitted to the Office of Management and Budget (OMB) for review. The EPA has prepared an economic analysis of the potential costs and benefits associated with this action. The economic analysis is described in section V of this preamble. This analysis, *Economic and Small Entity Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors Risk and Technology Review*, is available in the docket for this rule.³⁰¹

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1773.15. 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.

This action revises the current ICR for the HWC NESHAP. The goal of this revision is to incorporate new monitoring, reporting, and recordkeeping requirements associated with revisions to the HWC NESHAP. The key revisions to this subpart are the addition of new emission limits and work practice standards, removal of exemptions for emissions during periods of SSM, removal of the requirement to install and operate PM CEMS, and addition of e-reporting using CEDRI to replace physically mailing many of the reports and notifications required under this subpart. These revisions require modifications to the monitoring, reporting, and recordkeeping requirements of the rule. The information collected in this ICR will be used to ensure compliance with this subpart. All information submitted to the Agency in response to the ICR will be managed in accordance with applicable laws and the EPA's regulations governing treatment of confidential business information.³⁰² Any information determined to

constitute a trade secret will be protected under 18 U.S.C. 1905.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of HWCs subject to emission standards under 40 CFR part 63, subpart EEE.

Respondent's obligation to respond: Mandatory under the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (40 CFR part 63, subpart EEE).

Estimated number of respondents: On average, approximately 165 respondents per year (assuming one new source per year).

Frequency of response: The frequency of response varies by notification or report, as required in 40 CFR part 63, subpart EEE. Generally, respondents will have one-time responses, semiannual responses, and responses every five years.

Total estimated burden: The average annual recordkeeping and reporting burden for all facilities to comply with the requirements of this rule is estimated to be 2,350 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual labor cost for all facilities to comply with the requirements of this rule is estimated to be \$259,000 per year, and this rule is estimated to provide an average annual capital, operation, and maintenance cost savings of \$180,000 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, an ICR unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations 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. The small entities subject to the requirements of this action are eight small businesses out of the 57 affected entities (or 14 percent of the total). These small businesses are estimated to experience an impact ranging from a cost savings of 0.01 percent to an adverse impact of 0.16 percent, measured as a percentage of their revenues. Two of these eight small businesses are estimated to experience cost savings under this action. Details of

this analysis are presented in the memorandum *Economic and Small Entity Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors Risk and Technology Review*, available in the docket for this rule.³⁰³

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed \$100 million or more.

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 Federal 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 HWC unit owned or operated by Tribal governments. This action will not have substantial direct costs or impacts on the relationship between the Federal government and Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to these amendments.

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, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to

³⁰¹ See Docket ID. No. EPA–HQ–OAR–2004–0022.

³⁰² See 40 CFR part 2, subpart B.

³⁰³ See Docket ID. No. EPA–HQ–OAR–2004–0022.

children. Furthermore, this action provides additional emission limits and work practices that will benefit all ages, including children.

However, the EPA's Policy on Children's Health applies to this action because the rule has considerations for human health.³⁰⁴ Accordingly, the EPA has evaluated the environmental health effects of the HWC source category to early life exposure (the life stages from conception, infancy, early childhood, and through adolescence until 21 years of age) and lifelong health.

The results of this evaluation are contained in sections III.A and IV.A of this preamble and further documented in the risk report, *Residual Risk Assessment for the Hazardous Waste Combustors Source Category in Support of the 2025 Risk and Technology Review Proposed Rule*, which is available in the docket for this rulemaking.³⁰⁵

This action is consistent with the EPA's Policy on Children Health because the risk assessment accounts for early life exposures.

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 a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the 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 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Lee Zeldin,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

■ 2. Amend § 63.1200 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 63.1200 Who is subject to these regulations?

* * * * *

(a) * * *

(2) Major sources subject to this subpart, but not previously subject to title V, are immediately subject to the requirement to apply for and obtain a title V permit in all states, and in areas covered by part 71 of this chapter.

(3) Area sources subject to this subpart, but not previously subject to title V, are immediately subject to the requirement to apply for and obtain a title V permit in all states, and in areas covered by part 71 of this chapter, except that a title V permitting authority may choose to exclude area sources from the requirement to apply for and obtain a title V permit on a source-by-source basis unless the area source is otherwise required by law to obtain a title V permit. Notwithstanding whether an area source has a title V permit, you must continue to comply with the provisions of this subpart.

* * * * *

■ 3. Amend § 63.1201(a) by revising the definition of "By-pass duct" and adding in alphabetical order a definition of "Postmark" to read as follows.

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

By-pass duct means a device which diverts a minimum of 10 percent of a cement kiln's off gas, or a device which the Administrator determines on a case-by-case basis by means of an applicability determination diverts a sample of kiln gas that contains levels of carbon monoxide or hydrocarbons representative of the levels in the kiln.

* * * * *

Postmark means the date on which a report is certified for submittal in the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). For a submission that is not required to be submitted to CEDRI, postmark also means the date the post office marks a

letter, the date a commercial delivery service accepts a package, the date a submission is delivered by hand to an applicable location, or the date a submission is made through the official reporting platform of an applicable delegated authority.

* * * * *

■ 4. Revise § 63.1206 to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) *Compliance dates*—(1) *Compliance dates for incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste*—(i) *Compliance date for standards under §§ 63.1203, 63.1204, and 63.1205*—(A) *Compliance dates for existing sources.* You must comply with the emission standards under §§ 63.1203 through 63.1205 and the other requirements of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213, except:

(1) Cement kilns are exempt from the bag leak detection system requirements under paragraph (c)(8) of this section;

(2) The bag leak detection system required under § 63.1206(c)(8) must be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter unless you demonstrate under § 63.1209(g)(1) that a higher detection limit would adequately detect bag leaks, in lieu of the requirement for the higher detection limit under paragraph (c)(8)(ii)(A) of this section; and

(3) The excessive exceedances notification requirements for bag leak detection systems under paragraph (c)(8)(iv) of this section are waived.

(B) *New or reconstructed sources.* (1) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with the emission standards under §§ 63.1203 through 63.1205 and the other requirements of this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraphs (a)(1)(i)(A)(1) through (3) and (a)(1)(i)(B)(2) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

(2) For a standard under §§ 63.1203 through 63.1205 that is more stringent than the standard proposed on April 19, 1996, you may achieve compliance no

³⁰⁴ For more information on the EPA's Policy on Children's Health, visit <https://www.epa.gov/children/childrens-health-policy-and-plan>.

³⁰⁵ See Docket ID. No. EPA-HQ-OAR-2004-0022.

later than September 30, 2003 if you comply with the standard proposed on April 19, 1996 after September 30, 1999. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after September 30, 1999. As provided by § 63.6(b)(7), such sources must comply with the standards under §§ 63.1203 through 63.1205 at startup.

(ii) *Compliance date for standards under §§ 63.1219, 63.1220, and 63.1221*—(A) Compliance dates for existing sources. (1) You must comply with the emission standards under §§ 63.1219 through 63.1221, except for emission standards for hydrogen fluoride and hydrogen cyanide, and the other requirements of this subpart no later than the compliance date, October 14, 2008, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(2) You must comply with the emission standards under §§ 63.1219 through 63.1221 for hydrogen fluoride and hydrogen cyanide no later than June 3, 2029 unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(B) *New or reconstructed sources.* (1) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards under §§ 63.1219 through 63.1221, except for emission standards for hydrogen fluoride and hydrogen cyanide, and the other requirements of this subpart by the later of October 12, 2005 or the date the source starts operations, except as provided by paragraphs (a)(1)(ii)(B)(2) through (4) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 20, 2004, and a source's compliance date, are not considered to be reconstruction costs.

(2) For a standard under §§ 63.1219 through 63.1221 that is more stringent than the standard proposed on April 20, 2004, you may achieve compliance no later than October 14, 2008, if you comply with the standard proposed on April 20, 2004, after October 12, 2005. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after October 14, 2008. As provided by § 63.6(b)(7), such sources must comply with the standards under §§ 63.1219 through 63.1221 at startup.

(3) If you commenced construction or reconstruction of a cement kiln after April 20, 2004, you must comply with

the new source emission standard for particulate matter under § 63.1220(b)(7)(i) by the later of October 28, 2008 or the date the source starts operations.

(4) If you commenced construction or reconstruction of your hazardous waste combustor after November 10, 2025, you must comply with the new source emission standards under §§ 63.1219 through 63.1221 for hydrogen fluoride and hydrogen cyanide by the date the source starts operations. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between November 10, 2025, and a source's compliance date, are not considered to be reconstruction costs.

(2) *Compliance date for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that burn hazardous waste for standards under §§ 63.1216, 63.1217, and 63.1218.*

(i) *Compliance date for existing sources.* (A) You must comply with the standards of this subpart, except for emission standards for hydrogen fluoride and hydrogen cyanide, no later than the compliance date, October 14, 2008, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(B) You must comply with the emission standards of this subpart for hydrogen fluoride and hydrogen cyanide no later than June 3, 2029, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(ii) *New or reconstructed sources.* (A) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards, except for emission standards for hydrogen fluoride and hydrogen cyanide, of this subpart by the later of October 12, 2005, or the date the source starts operations, except as provided by paragraph (a)(2)(ii)(B) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 20, 2004, and a source's compliance date, are not considered to be reconstruction costs.

(B) (1) For a standard in the subpart that is more stringent than the standard proposed on April 20, 2004, you may achieve compliance no later than October 14, 2008, if you comply with the standard proposed on April 20, 2004, after October 12, 2005. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after October 14, 2008. As provided by § 63.6(b)(7), such

sources must comply with this subpart at startup.

(2) If you commenced construction or reconstruction of your hazardous waste combustor after November 10, 2025, you must comply with the new source emission standards for hydrogen fluoride and hydrogen cyanide by the date the source starts operations. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart between November 10, 2025, and a source's compliance date, are not considered to be reconstruction costs.

(3) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, your compliance date is the earlier of the date you postmark the Notification of Compliance under § 63.1207(j)(1) or the dates specified in paragraphs (a)(1) and (2) of this section.

(b) *Compliance with standards*—(1) *Applicability.* The emission standards and operating requirements set forth in this subpart apply at all times except:

(i) During periods of startup, shutdown, and malfunction, only the requirements specified in § 63.1206(c)(2), (c)(10), and (c)(11) apply; and

(ii) When hazardous waste is not in the combustion chamber (*i.e.*, the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of Clean Air Act section 112 (*e.g.*, 40 CFR part 63, subparts LLL, DDDDD, and NNNNN) or Clean Air Act section 129 in lieu of the emission standards under §§ 63.1203 through 63.1205, and 63.1215 through 63.1221; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

(2) *Methods for determining compliance.* The Administrator will determine compliance with the emission standards of this subpart as provided by § 63.6(f)(2). Conducting performance testing under operating conditions representative of the extreme range of normal conditions is consistent with the requirement of § 63.1207(g) to conduct performance testing under representative operating conditions.

(3) *Finding of compliance.* The Administrator will make a finding

concerning compliance with the emission standards and other requirements of this subpart as provided by § 63.6(f)(3).

(4) *Extension of compliance with emission standards.* The Administrator may grant an extension of compliance with the emission standards of this subpart as provided by §§ 63.6(i) and 63.1213.

(5) *Changes in design, operation, or maintenance*—(i) *Changes that may adversely affect compliance.* If you plan to change (as defined in paragraph (b)(5)(iii) of this section) the design, operation, or maintenance practices of the source in a manner that may adversely affect compliance with any emission standard that is not monitored with a CEMS:

(A) *Notification.* You must notify the Administrator at least 60 days prior to the change, unless you document circumstances that dictate that such prior notice is not reasonably feasible. The notification must include:

(1) A description of the changes and which emission standards may be affected; and

(2) A comprehensive performance test schedule and test plan under the requirements of § 63.1207(f) that will document compliance with the affected emission standard(s);

(B) *Performance test.* You must conduct a comprehensive performance test under the requirements of § 63.1207(f)(1) and (g)(1) to document compliance with the affected emission standard(s) and establish operating parameter limits as required under § 63.1209, and submit to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d); and

(C) *Restriction on waste burning.* (1) Except as provided by paragraph (b)(5)(i)(C)(2) of this section, after the change and prior to submitting the notification of compliance, you must not burn hazardous waste for more than a total of 720 hours (renewable at the discretion of the Administrator) and only for the purposes of pretesting or comprehensive performance testing. Pretesting is defined at § 63.1207(h)(2)(i) and (ii).

(2) You may petition the Administrator to obtain written approval to burn hazardous waste in the interim prior to submitting a Notification of Compliance for purposes other than testing or pretesting. You must specify operating requirements, including limits on operating parameters, that you determine will ensure compliance with the emission standards of this subpart based on available information. The

Administrator will review, modify as necessary, and approve if warranted the interim operating requirements.

(ii) *Changes that will not affect compliance.* If you determine that a change will not adversely affect compliance with the emission standards or operating requirements, you must document the change in the operating record upon making such change. You must revise as necessary the performance test plan, Documentation of Compliance, Notification of Compliance, and start-up, shutdown, and malfunction plan to reflect these changes.

(iii) *Definition of “change.”* For purposes of paragraph (b)(5) of this section, “change” means any change in design, operation, or maintenance practices that were documented in the comprehensive performance test plan, Notification of Compliance, or startup, shutdown, and malfunction plan.

(6) *Compliance with the carbon monoxide and hydrocarbon emission standards.* This paragraph applies to sources that elect to comply with the carbon monoxide and hydrocarbon emissions standards of this subpart by documenting continuous compliance with the carbon monoxide standard using a continuous emissions monitoring system and documenting compliance with the hydrocarbon standard during the destruction and removal efficiency (DRE) performance test or its equivalent.

(i) If a DRE test performed pursuant to § 63.1207(c)(2) is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

(ii) If during this acceptable DRE test you did not obtain hydrocarbon emissions data sufficient to document compliance with the hydrocarbon standard, you must either:

(A) Perform, as part of the performance test, an “equivalent DRE test” to document compliance with the hydrocarbon standard. An equivalent DRE test is comprised of a minimum of three runs each with a minimum duration of one hour during which you operate the combustor as close as reasonably possible to the operating parameter limits that you established based on the initial DRE test. You must use the highest hourly rolling average

hydrocarbon emission level achieved during the equivalent DRE test to document compliance with the hydrocarbon standard; or

(B) Perform a DRE test as part of the performance test.

(7) *Compliance with the DRE standard.* (i) Except as provided in paragraphs (b)(7)(ii) and (iii) of this section:

(A) You must document compliance with the Destruction and Removal Efficiency (DRE) standard under this subpart only once provided that you do not modify the source after the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(1) You have not modified the design or operation of your source in a manner that could affect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(2) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) *Sources that feed hazardous waste at locations other than the normal flame zone.* (A) Except as provided by paragraph (b)(7)(ii)(B) of this section, if you feed hazardous waste at a location in the combustion system other than the normal flame zone, then you must demonstrate compliance with the DRE standard during each comprehensive performance test;

(B) (1) A cement kiln that feeds hazardous waste at a location other than the normal flame zone need only demonstrate compliance with the DRE standard during three consecutive comprehensive performance tests provided that:

(i) All three tests achieve the DRE standard in this subpart; and

(ii) The design, operation, and maintenance features of each of the three tests are similar;

(iii) The data in lieu restriction of § 63.1207(c)(2)(iv) does not apply when complying with the provisions of paragraph (b)(7)(ii)(B) of this section;

(2) If at any time you change your design, operation, and maintenance features in a manner that could reasonably be expected to affect your ability to meet the DRE standard, then you must comply with the requirements of paragraph (b)(7)(ii)(A) of this section.

(iii) For sources that do not use DRE previous testing to document conformance with the DRE standard pursuant to § 63.1207(c)(2), you must perform DRE testing during the initial comprehensive performance test.

(8) [Reserved].

(9) *Alternative standards for existing or new hazardous waste burning lightweight aggregate kilns using MACT.*

(i) You may petition the Administrator to request alternative standards to the mercury or hydrogen chloride/chlorine gas emission standards of this subpart, to the semivolatile metals emission standards under § 63.1205, § 63.1221(a)(3)(ii), or § 63.1221(b)(3)(ii), or to the low volatile metals emissions standards under § 63.1205, § 63.1221(a)(4)(ii), or § 63.1221(b)(4)(ii) if:

(A) You cannot achieve one or more of these standards while using maximum achievable control technology (MACT) because of raw material contributions to emissions of mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas; or

(B) You determine that mercury is not present at detectable levels in your raw material.

(ii) The alternative standard that you recommend under paragraph (b)(9)(i)(A) of this section may be an operating requirement, such as a hazardous waste feedrate limitation for metals and/or chlorine, and/or an emission limitation.

(iii) The alternative standard must include a requirement to use MACT, or better, applicable to the standard for which the source is seeking relief, as defined in paragraphs (b)(9)(viii) and (ix) of this section.

(iv) *Documentation required.* (A) The alternative standard petition you submit under paragraph (b)(9)(i)(A) of this section must include data or information documenting that raw material contributions to emissions prevent you from complying with the emission standard even though the source is using MACT, as defined under paragraphs (b)(9)(viii) and (ix) of this section, for the standard for which you are seeking relief.

(B) Alternative standard petitions that you submit under paragraph (b)(9)(i)(B) of this section must include data or information documenting that mercury is not present at detectable levels in raw materials.

(v) You must include data or information with semivolatile metal and low volatility metal alternative standard petitions that you submit under paragraph (b)(9)(i)(A) of this section documenting that increased chlorine feedrates associated with the burning of hazardous waste, when compared to non-hazardous waste operations, do not significantly increase metal emissions attributable to raw materials.

(vi) You must include data or information with semivolatile metals,

low volatile metals, and hydrogen chloride/chlorine gas alternative standard petitions that you submit under paragraph (b)(9)(i)(A) of this section documenting that semivolatile metals, low volatile metals, and hydrogen chloride/chlorine gas emissions attributable to the hazardous waste only will not exceed the emission standards of this subpart.

(vii) You must not operate pursuant to your recommended alternative standards in lieu of emission standards specified in this subpart:

(A) Unless the Administrator approves the provisions of the alternative standard petition request or establishes other alternative standards; and

(B) Until you submit a revised Notification of Compliance that incorporates the revised standards.

(viii) For purposes of this alternative standard provision, MACT for existing hazardous waste burning lightweight aggregate kilns is defined as:

(A) For mercury, a hazardous waste feedrate corresponding to an MTEC of 24 µg/dscm or less;

(B) For semivolatile metals, a hazardous waste feedrate corresponding to an MTEC of 280,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 57 mg/dscm or less;

(C) For low volatile metals, a hazardous waste feedrate corresponding to an MTEC of 120,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 57 mg/dscm or less; and

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 2,000,000 µg/dscm or less, and use of an air pollution control device with a hydrogen chloride/chlorine gas removal efficiency of 85 percent or greater.

(ix) For purposes of this alternative standard provision, MACT for new hazardous waste burning lightweight aggregate kilns is defined as:

(A) For mercury, a hazardous waste feedrate corresponding to an MTEC of 4 µg/dscm or less;

(B) For semivolatile metals, a hazardous waste feedrate corresponding to an MTEC of 280,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 57 mg/dscm or less;

(C) For low volatile metals, a hazardous waste feedrate corresponding to an MTEC of 46,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 57 mg/dscm or less;

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate

corresponding to an MTEC of 14,000,000 µg/dscm or less, and use of an air pollution control device with a hydrogen chloride/chlorine gas removal efficiency of 99.6 percent or greater.

(10) *Alternative standards for existing or new hazardous waste burning cement kilns using MACT.* (i) You may petition the Administrator to request alternative standards to the mercury or hydrogen chloride/chlorine gas emission standards of this subpart, to the semivolatile metals emission standards under § 63.1204, § 63.1220(a)(3)(ii), or § 63.1220(b)(3)(ii), or to the low volatile metals emissions standards under § 63.1204, § 63.1220(a)(4)(ii), or § 63.1220(b)(4)(ii) if:

(A) You cannot achieve one or more of these standards while using maximum achievable control technology (MACT) because of raw material contributions to emissions of mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas; or

(B) You determine that mercury is not present at detectable levels in your raw material.

(ii) The alternative standard that you recommend under paragraph (b)(10)(i)(A) of this section may be an operating requirement, such as a hazardous waste feedrate limitation for metals and/or chlorine, and/or an emission limitation.

(iii) The alternative standard must include a requirement to use MACT, or better, applicable to the standard for which the source is seeking relief, as defined in paragraphs (b)(10)(viii) and (ix) of this section.

(iv) *Documentation required.* (A) The alternative standard petition you submit under paragraph (b)(10)(i)(A) of this section must include data or information documenting that raw material contributions to emissions prevent you from complying with the emission standard even though the source is using MACT, as defined in paragraphs (b)(10)(viii) and (ix) of this section, for the standard for which you are seeking relief.

(B) Alternative standard petitions that you submit under paragraph (b)(10)(i)(B) of this section must include data or information documenting that mercury is not present at detectable levels in raw materials.

(v) You must include data or information with semivolatile metal and low volatile metal alternative standard petitions that you submit under paragraph (b)(10)(i)(A) of this section documenting that increased chlorine feedrates associated with the burning of hazardous waste, when compared to non-hazardous waste operations, do not

significantly increase metal emissions attributable to raw materials.

(vi) You must include data or information with semivolatile metals, low volatile metals, and hydrogen chloride/chlorine gas alternative standard petitions that you submit under paragraph (b)(10)(i)(A) of this section documenting that emissions of the regulated metals and hydrogen chloride/chlorine gas attributable to the hazardous waste only will not exceed the emission standards in this subpart.

(vii) You must not operate pursuant to your recommended alternative standards in lieu of emission standards specified in this subpart:

(A) Unless the Administrator approves the provisions of the alternative standard petition request or establishes other alternative standards; and

(B) Until you submit a revised Notification of Compliance that incorporates the revised standards.

(viii) For purposes of this alternative standard provision, MACT for existing hazardous waste burning cement kilns is defined as:

(A) For mercury, a hazardous waste feedrate corresponding to an MTEC of 88 µg/dscm or less;

(B) For semivolatile metals, a hazardous waste feedrate corresponding to an MTEC of 31,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 0.15 kg/Mg dry feed or less;

(C) For low volatile metals, a hazardous waste feedrate corresponding to an MTEC of 54,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 0.15 kg/Mg dry feed or less; and

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 720,000 µg/dscm or less.

(ix) For purposes of this alternative standard provision, MACT for new hazardous waste burning cement kilns is defined as:

(A) For mercury, a hazardous waste feedrate corresponding to an MTEC of 7 µg/dscm or less;

(B) For semivolatile metals, a hazardous waste feedrate corresponding to an MTEC of 31,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 0.15 kg/Mg dry feed or less;

(C) For low volatile metals, a hazardous waste feedrate corresponding to an MTEC of 15,000 µg/dscm or less, and use of a particulate matter control device that achieves particulate matter emissions of 0.15 kg/Mg dry feed or less;

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 420,000 µg/dscm or less.

(11) *Calculation of hazardous waste residence time.* You must calculate the hazardous waste residence time and include the calculation in the performance test plan under § 63.1207(f) and the operating record. You must also provide the hazardous waste residence time in the Documentation of Compliance under § 63.1211(c) and the Notification of Compliance under §§ 63.1207(j) and 63.1210(d).

(12) *Documenting compliance with the standards based on performance testing.* (i) You must conduct a minimum of three runs of a performance test required under § 63.1207 to document compliance with the emission standards of this subpart.

(ii) You must document compliance with the emission standards based on the arithmetic average of the emission results of each run, except that you must document compliance with the destruction and removal efficiency standard for each run of the comprehensive performance test individually.

(13) *Cement kilns and lightweight aggregate kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired.* (i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of this subpart as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct

is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2) (i) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(ii) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a

continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3) (i) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(ii) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

(ii) Lightweight aggregate kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the hydrocarbon standards of this subpart as follows:

(A) Existing sources must comply with the 20 parts per million by volume hydrocarbon standard of this subpart;

(B) New sources must comply with the 20 parts per million by volume hydrocarbon standard of this subpart.

(14) *Alternative to the particulate matter standard for incinerators*—(i) *General*. In lieu of complying with the particulate matter standards under § 63.1203, you may elect to comply with the following alternative metal emission control requirements:

(ii) *Alternative metal emission control requirements for existing incinerators*.

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 240 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(iii) *Alternative metal emission control requirements for new incinerators*. (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 24 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(iv) *Operating limits*. Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(15) *Alternative to the interim standards for mercury for cement and lightweight aggregate kilns*—(i) *General*. In lieu of complying with the applicable mercury standards of § 63.1204(a)(2) and (b)(2) for existing and new cement kilns and § 63.1205(a)(2) and (b)(2) for existing and new lightweight aggregate kilns, you may instead elect to comply with the alternative mercury standard described in paragraphs (b)(15)(ii) through (v) of this section.

(ii) *Operating requirement*. You must not exceed a hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) of 120

µg/dscm on a twelve-hour rolling average.

(iii) To document compliance with the operating requirement of paragraph (b)(15)(ii) of this section, you must:

(A) Monitor and record the feedrate of mercury for each hazardous waste feedstream according to § 63.1209(c);

(B) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(C) Continuously calculate and record in the operating record a MTEC assuming mercury from all hazardous waste feedstreams is emitted;

(D) Interlock the MTEC calculated in paragraph (b)(15)(iii)(C) of this section to the AWFCO system to stop hazardous waste burning when the MTEC exceeds the operating requirement of paragraph (b)(15)(ii) of this section.

(iv) In lieu of the requirement in paragraph (b)(15)(iii) of this section, you may:

(A) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (b)(15)(iii)(C) of this section is below the operating requirement of paragraph (b)(15)(ii) of this section; and

(B) Interlock the minimum gas flowrate limit and maximum feedrate limits in paragraph (b)(15)(iv)(A) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury feedrate exceeds the limits in paragraph (b)(15)(iv)(A) of this section.

(v) *Notification requirement*. You must notify in writing the RCRA authority that you intend to comply with the alternative standard.

(16) *Compliance with subcategory standards for liquid fuel boilers*. You must comply with the mercury, semivolatile metals, low volatile metals, and hydrogen chloride and chlorine standards for liquid fuel boilers under § 63.1217 as follows:

(i) You must determine the as-fired heating value of each batch of hazardous waste fired by each firing system of the boiler so that you know the mass-weighted heating value of the hazardous waste fired at all times.

(ii) If the as-fired heating value of the hazardous waste is 10,000 Btu per pound or greater, you are subject to the thermal emission concentration standards (lb/million Btu) under § 63.1217.

(iii) If the as-fired heating value of the hazardous waste is less than 10,000 Btu/lb, you are subject to the mass or

volume emission concentration standards ($\mu\text{g}/\text{dscm}$ or ppmv) under § 63.1217.

(iv) If the as-fired heating value of hazardous wastes varies above and below 10,000 Btu/lb over time, you are subject to the thermal concentration standards when the heating value is 10,000 Btu/lb or greater and the mass concentration standards when the heating value is less than 10,000 Btu/lb. You may elect to comply at all times with the more stringent operating requirements that ensure compliance with both the thermal emission concentration standards and the mass or volume emission concentration standards.

(c) *Operating requirements—(1) General.* (i) You must operate only under the operating requirements specified in the Documentation of Compliance under § 63.1211(c) or the Notification of Compliance under §§ 63.1207(j) and 63.1210(d), except:

(A) During performance tests under approved test plans according to § 63.1207(e), (f), and (g), and

(B) Under the conditions of paragraph (b)(1)(i) or (ii) of this section;

(ii) The Documentation of Compliance and the Notification of Compliance must contain operating requirements including, but not limited to, the operating requirements in this section and § 63.1209;

(iii) Failure to comply with the operating requirements is failure to ensure compliance with the emission standards of this subpart;

(iv) Operating requirements in the Notification of Compliance are applicable requirements for purposes of parts 70 and 71 of this chapter;

(v) The operating requirements specified in the Notification of Compliance will be incorporated in the title V or other air permit either directly or by reference.

(2) *Startup, shutdown, and malfunction plan.* (i) You are subject to the startup, shutdown, and malfunction plan requirements of § 63.6(e)(3).

(ii) If you elect to comply with § 270.235(a)(1)(iii), § 270.235(a)(2)(iii), or § 270.235(b)(1)(ii) of this chapter to address RCRA concerns that you minimize emissions of toxic compounds from startup, shutdown, and malfunction events (including releases from emergency safety vents), then you must comply with the requirements in paragraphs (c)(2)(ii)(A) through (C) of this section. Beginning November 30, 2026, all sources must comply with the requirements in paragraphs (c)(2)(ii)(A) through (C) of this section.

(A) The startup, shutdown, and malfunction plan must include a

description of potential causes of malfunctions, including releases from emergency safety vents, that may result in significant releases of hazardous air pollutants, and actions the source is taking to minimize the frequency and severity of those malfunctions.

(B) You must submit the startup, shutdown, and malfunction plan to the Administrator for review and approval either postmarked within 180 days of June 3, 2026, or upon initial startup, whichever is later. You must begin complying with the submitted startup, shutdown, and malfunction plan upon postmark while awaiting the Administrator's approval. If changes are made to the startup, shutdown, and malfunction plan as a result of the approval process, sources must begin complying with the revised startup, shutdown, and malfunction plan upon notification of approval.

(1) *Approval procedure.* The Administrator will notify you of approval or intention to deny approval of the startup, shutdown, and malfunction plan within 90 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplemental information that you submit. Before disapproving the plan, the Administrator will notify you of the Administrator's intention to disapprove the plan together with:

(i) Notice of the information and findings on which intended disapproval is based; and

(ii) Notice of opportunity for you to present additional information to the Administrator before final action on disapproval of the plan. At the time the Administrator notifies you of intention to disapprove the plan, the Administrator will specify how much time you will have after being notified on the intended disapproval to submit additional information.

(2) *Responsibility of owners and operators.* You are responsible for ensuring that you submit any supplementary and additional information supporting your plan in a timely manner to enable the Administrator to consider whether to approve the plan. Neither your submittal of the plan, nor the Administrator's failure to approve or disapprove the plan, relieves you of the responsibility to comply with the provisions of this subpart.

(C) *Changes to the plan that may significantly increase emissions.* (1) You must request approval in writing from the Administrator within 5 days after making a change to the startup, shutdown, and malfunction plan that may significantly increase emissions of hazardous air pollutants.

(2) To request approval of such changes to the startup, shutdown, and malfunction plan, you must follow the procedures provided by paragraph (c)(2)(ii)(B) of this section for initial approval of the plan.

(iii) You must identify in the plan a projected oxygen correction factor based on normal operations to use during periods of startup and shutdown.

(iv) You must record the plan in the operating record.

(v) *Operating under the startup, shutdown, and malfunction plan—(A) Compliance with AWFCO requirements during malfunctions.* (1) During malfunctions, the automatic waste feed cutoff requirements of § 63.1206(c)(3) continue to apply, except for paragraphs (c)(3)(v) and (vi) of this section. If you exceed an emission standard under this subpart monitored by a CEMS or COMs or operating limit specified under § 63.1209, the automatic waste feed cutoff system must immediately and automatically cutoff the hazardous waste feed, except as provided by paragraph (c)(3)(viii) of this section. If the malfunction itself prevents immediate and automatic cutoff of the hazardous waste feed, however, you must cease feeding hazardous waste as quickly as possible.

(2) Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMs or operating limit specified under § 63.1209 after a malfunction has occurred is not a violation of this subpart if:

(i) You took the actions to minimize the frequency and severity of the malfunction prescribed in the startup, shutdown, and malfunction plan prior to the malfunction; and

(ii) You take the corrective measures prescribed in the startup, shutdown, and malfunction plan in response to the malfunction.

(3) *Excessive exceedances during malfunctions.* For each set of 10 exceedances of an emission standard or operating requirement while hazardous waste remains in the combustion chamber (*i.e.*, when the hazardous waste residence time has not transpired since the hazardous waste feed was cutoff) during a 60-day block period, you must:

(i) Within 45 days of the 10th exceedance, complete an investigation of the cause of each exceedance and evaluation of approaches to minimize the frequency, duration, and severity of each exceedance, and revise the startup, shutdown, and malfunction plan as warranted by the evaluation to minimize the frequency, duration, and severity of each exceedance; and

(ii) Record the results of the investigation and evaluation in the operating record, and include a summary of the investigation and evaluation, and any changes to the startup, shutdown, and malfunction plan, in the excess emissions report required under § 63.10(e)(3).

(B) *Compliance with AWFCO requirements when burning hazardous waste during startup and shutdown.* (1) If you feed hazardous waste during startup or shutdown, you must include waste feed restrictions (e.g., type and quantity), and other appropriate operating conditions and limits in the startup, shutdown, and malfunction plan.

(2) You must interlock the operating limits you establish under paragraph (c)(2)(v)(B)(1) of this section with the automatic waste feed cutoff system required under § 63.1206(c)(3), except for paragraphs (c)(3)(v) and (vi) of this section.

(3) When feeding hazardous waste during startup or shutdown, the automatic waste feed cutoff system must immediately and automatically cutoff the hazardous waste feed if you exceed the operating limits you establish under paragraph (c)(2)(v)(B)(1) of this section, except as provided by paragraph (c)(3)(viii) of this section.

(4) [Reserved].

(3) *Automatic waste feed cutoff (AWFCO)*—(i) *General.* Upon the compliance date, you must operate the hazardous waste combustor with a functioning system that immediately and automatically cuts off the hazardous waste feed, except as provided by paragraph (c)(3)(viii) of this section:

(A) When any of the following are exceeded: Operating parameter limits specified under § 63.1209; an emission standard monitored by a CEMS; and the allowable combustion chamber pressure;

(B) When the span value of any CMS detector, except a CEMS, is met or exceeded;

(C) Upon malfunction of a CMS monitoring an operating parameter limit specified under § 63.1209 or an emission level; or

(D) When any component of the automatic waste feed cutoff system fails.

(ii) *Ducting of combustion gases.* During an AWFCO, you must continue to duct combustion gases to the air pollution control system while hazardous waste remains in the combustion chamber (i.e., if the hazardous waste residence time has not transpired since the hazardous waste feed cutoff system was activated).

(iii) *Restarting waste feed.* You must continue to monitor during the cutoff

the operating parameters for which limits are established under § 63.1209 and the emissions required under that section to be monitored by a CEMS, and you must not restart the hazardous waste feed until the operating parameters and emission levels are within the specified limits.

(iv) *Failure of the AWFCO system.* If the AWFCO system fails to automatically and immediately cutoff the flow of hazardous waste upon exceedance of a parameter required to be interlocked with the AWFCO system under paragraph (c)(3)(i) of this section, you have failed to comply with the AWFCO requirements of paragraph (c)(3) of this section. If an equipment or other failure prevents immediate and automatic cutoff of the hazardous waste feed, however, you must cease feeding hazardous waste as quickly as possible.

(v) *Corrective measures.* If, after any AWFCO, there is an exceedance of an emission standard or operating requirement, irrespective of whether the exceedance occurred while hazardous waste remained in the combustion chamber (i.e., whether the hazardous waste residence time has transpired since the hazardous waste feed cutoff system was activated), you must investigate the cause of the AWFCO, take appropriate corrective measures to minimize future AWFCOs, and record the findings and corrective measures in the operating record.

(vi) *Excessive exceedance reporting.* (A) For each set of 10 exceedances of an emission standard or operating requirement while hazardous waste remains in the combustion chamber (i.e., when the hazardous waste residence time has not transpired since the hazardous waste feed was cutoff) during a 60-day block period, you must submit to the Administrator a written report within 5 calendar days of the 10th exceedance documenting the exceedances and results of the investigation and corrective measures taken.

(B) On a case-by-case basis, the Administrator may require excessive exceedance reporting when fewer than 10 exceedances occur during a 60-day block period.

(vii) *Testing.* The AWFCO system and associated alarms must be tested at least weekly to verify operability, unless you document in the operating record that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, you must conduct operability testing at least monthly. You must document and record in the operating record AWFCO operability test procedures and results.

(viii) *Ramping down waste feed.* (A) You may ramp down the waste feedrate of pumpable hazardous waste over a period not to exceed one minute, except as provided by paragraph (c)(3)(viii)(B) of this section. If you elect to ramp down the waste feed, you must document ramp down procedures in the operating and maintenance plan. The procedures must specify that the ramp down begins immediately upon initiation of automatic waste feed cutoff and the procedures must prescribe a bona fide ramping down. If an emission standard or operating limit is exceeded during the ramp down, you have failed to comply with the emission standards or operating requirements of this subpart.

(B) If the automatic waste feed cutoff is triggered by an exceedance of any of the following operating limits, you may not ramp down the waste feed cutoff: Minimum combustion chamber temperature, maximum hazardous waste feedrate, or any hazardous waste firing system operating limits that may be established for your combustor.

(4) *ESV openings*—(i) *Failure to meet standards.* If an emergency safety vent (ESV) opens when hazardous waste remains in the combustion chamber (i.e., when the hazardous waste residence time has not expired) during an event other than a malfunction as defined in the startup, shutdown, and malfunction plan such that combustion gases are not treated as during the most recent comprehensive performance test (e.g., if the combustion gas by-passes any emission control device that was operating during the performance test), you must document in the operating record whether you remain in compliance with the emission standards of this subpart considering emissions during the ESV opening event.

(ii) *ESV operating plan.* (A) You must develop an ESV operating plan, comply with the operating plan, and keep the plan in the operating record.

(B) The ESV operating plan must provide detailed procedures for rapidly stopping the waste feed, shutting down the combustor, and maintaining temperature and negative pressure in the combustion chamber during the hazardous waste residence time, if feasible. The plan must include calculations and information and data documenting the effectiveness of the plan's procedures for ensuring that combustion chamber temperature and negative pressure are maintained as is reasonably feasible.

(iii) *Corrective measures.* After any ESV opening that results in a failure to meet the emission standards as defined in paragraph (c)(4)(i) of this section, you

must investigate the cause of the ESV opening, take appropriate corrective measures to minimize such future ESV openings, and record the findings and corrective measures in the operating record.

(iv) *Reporting requirements.* You must submit to the Administrator a written report within 5 days of an ESV opening that results in failure to meet the emission standards of this subpart (as determined in paragraph (c)(4)(i) of this section) documenting the result of the investigation and corrective measures taken.

(5) *Combustion system leaks.* (i) Combustion system leaks of hazardous air pollutants must be controlled by:

(A) Keeping the combustion zone sealed to prevent combustion system leaks; or

(B) Maintaining the maximum combustion zone pressure lower than ambient pressure using an instantaneous monitor; or

(C) Upon prior written approval of the Administrator, an alternative means of control to provide control of combustion system leaks equivalent to maintenance of combustion zone pressure lower than ambient pressure; or

(D) Upon prior written approval of the Administrator, other technique(s) which can be demonstrated to prevent fugitive emissions without use of instantaneous pressure limits; and

(ii) You must specify in the performance test plan and Notification of Compliance the method that will be used to control combustion system leaks. If you control combustion system leaks by maintaining the combustion zone pressure lower than ambient pressure using an instantaneous monitor, you must also specify in the performance test plan and Notification of Compliance the monitoring and recording frequency of the pressure monitor, and specify how the monitoring approach will be integrated into the automatic waste feed cutoff system.

(6) *Operator training and certification.*

(i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job

duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the "certification" for personnel, except that, for control room operators, the training and certification program shall be as specified in paragraphs (c)(6)(iii) through (vi) of this section.

(ii) You must ensure that the source is operated and maintained at all times by persons who are trained and certified to perform these and any other duties that may affect emissions of hazardous air pollutants. A certified control room operator must be on duty at the site at all times the source is in operation.

(iii) Hazardous waste incinerator control room operators must:

(A) Be trained and certified under a site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) [Reserved].

(C) Be trained and certified under a state program.

(iv) Control room operators of cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces must be trained and certified under:

(A) A site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) A state program.

(v) Site-specific, source developed and implemented training programs for control room operators must include the following elements:

(A) Training on the following subjects:

(1) Environmental concerns, including types of emissions;

(2) Basic combustion principles, including products of combustion;

(3) Operation of the specific type of combustor used by the operator, including proper startup, waste firing, and shutdown procedures;

(4) Combustion controls and continuous monitoring systems;

(5) Operation of air pollution control equipment and factors affecting performance;

(6) Inspection and maintenance of the combustor, continuous monitoring systems, and air pollution control devices;

(7) Actions to correct malfunctions and conditions that may lead to malfunction;

(8) Residue characteristics and handling procedures; and

(9) Applicable Federal, state, and local regulations, including

Occupational Safety and Health Administration workplace standards; and

(B) An examination designed and administered by the instructor; and

(C) Written material covering the training course topics that may serve as reference material following completion of the course.

(vi) To maintain control room operator qualification under a site-specific, source developed and implemented training program as provided by paragraph (c)(6)(v) of this section, control room operators must complete an annual review or refresher course covering, at a minimum, the following topics:

(A) Update of regulations;

(B) Combustor operation, including startup and shutdown procedures, waste firing, and residue handling;

(C) Inspection and maintenance;

(D) Responses to malfunctions or conditions that may lead to malfunction; and

(E) Operating problems encountered by the operator.

(vii) You must record the operator training and certification program in the operating record.

(7) *Operation and maintenance plan.*

(i) You must prepare and at all times operate according to an operation and maintenance plan that describes in detail procedures for operation, inspection, maintenance, and corrective measures for all components of the combustor, including associated pollution control equipment, that could affect emissions of regulated hazardous air pollutants.

(ii) The plan must prescribe how you will operate and maintain the combustor in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels achieved during the comprehensive performance test.

(iii) This plan ensures compliance with the operation and maintenance requirements of § 63.6(e) and minimizes emissions of pollutants, automatic waste feed cutoffs, and malfunctions.

(iv) You must record the plan in the operating record.

(8) *Bag leak detection system requirements.* (i) If your combustor is equipped with a baghouse (fabric filter), you must continuously operate either:

(A) A bag leak detection system that meets the specifications and requirements of paragraph (c)(8)(ii) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(8)(iii) and (iv) of this section; or

(B) A particulate matter detection system under paragraph (c)(9) of this section.

(ii) *Bag leak detection system specification and requirements.* (A) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, under § 63.1209(g)(1), that a higher detection limit would routinely detect particulate matter loadings during normal operations;

(B) The bag leak detection system shall provide output of relative or absolute particulate matter loadings;

(C) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(D) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(E) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(F) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(G) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(H) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(iii) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7) of this section must include a corrective measures plan that specifies the procedures you will follow in the case

of a bag leak detection system alarm or malfunction. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm or bag leak detection system malfunction in accordance with the requirements of paragraph (c)(8)(iii)(A) of this section as well as the corrective measures taken to correct the control device or bag leak detection system malfunction or to minimize emissions in accordance with the requirements of paragraph (c)(8)(iii)(B) of this section. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(A) You must initiate the procedures used to determine the cause of the alarm or bag leak detection system malfunction within 30 minutes of the time the alarm first sounds; and

(B) You must alleviate the cause of the alarm or bag leak detection system malfunction by taking the necessary corrective measure(s) which may include, but are not to be limited to, the following:

(1) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(2) Sealing off defective bags or filter media;

(3) Replacing defective bags or filter media, or otherwise repairing the control device;

(4) Sealing off a defective baghouse compartment;

(5) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(6) Shutting down the combustor.

(iv) *Excessive exceedances notification.* If you operate the combustor when the detector response exceeds the alarm set-point or the bag leak detection system is malfunctioning more than 5 percent of the time during any 6-month block time period, you must submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and bag leak detection system malfunctions and the revisions to the design, operation, or maintenance of the combustor, baghouse, or bag leak detection system you are taking to minimize exceedances and bag leak detection system malfunctions. To document compliance with this requirement:

(A) You must keep records of the date, time, and duration of each alarm and bag leak detection system malfunction, the time corrective action was initiated and completed, and a brief description

of the cause of the alarm or bag leak detection system malfunction and the corrective action taken;

(B) You must record the percent of the operating time during each 6-month period that the alarm sounds and the bag leak detection system malfunctions;

(C) If inspection of the fabric filter demonstrates that no corrective action is required, then no alarm time is counted; and

(D) If corrective action is required, each alarm shall be counted as a minimum of 1 hour. Each bag leak detection system malfunction shall also be counted as a minimum of 1 hour.

(9) *Particulate matter detection system requirements.* You must continuously operate a particulate matter detection system (PMDS) that meets the specifications and requirements of paragraphs (c)(9)(i) through (v) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(9)(vii) and (viii) of this section if your combustor either: Is equipped with an electrostatic precipitator or ionizing wet scrubber and you do not establish site-specific control device operating parameter limits under § 63.1209(m)(1)(iv) that are linked to the automatic waste feed cutoff system under paragraph (c)(3) of this section, or is equipped with a baghouse (fabric filter) and you do not operate a bag leak detection system as provided by paragraph (c)(8)(i)(B) of this section.

(i) *PMDS requirements.* (A) The PMDS must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, under § 63.1209(g)(1), that a higher detection limit would routinely detect particulate matter loadings during normal operations;

(B) The particulate matter detector shall provide output of relative or absolute particulate matter loadings;

(C) The PMDS shall be equipped with an alarm system that will sound an audible alarm when an increase in relative or absolute particulate loadings is detected over the set-point;

(D) You must install, operate, and maintain the PMDS in a manner consistent with the provisions of paragraph (c)(9) of this section and available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, maintenance and quality assurance of the system.

(1) *Set-points established without extrapolation.* If you establish the alarm set-point without extrapolation under paragraph (c)(9)(iii)(A) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that will reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below those demonstrated during the comprehensive performance test. Your recommended quality assurance procedures may include periodic testing under as-found conditions (*i.e.*, normal operations) to obtain additional PM concentration and PMDS response run pairs, as warranted.

(2) *Set-points established with extrapolation.* If you establish the alarm set-point by extrapolation under paragraph (c)(9)(iii)(B) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that will reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below the value that correlates to the alarm set-point.

(E) You must include procedures for installation, operation, maintenance, and quality assurance of the PMDS in the site-specific continuous monitoring system test plan required under §§ 63.1207(e) and 63.8(e)(3);

(F) Where multiple detectors are required to monitor multiple control devices, the system's instrumentation and alarm system may be shared among the detectors.

(G) You must establish the alarm set-point as a 6-hour rolling average as provided by paragraphs (c)(9)(ii) through (iv) of this section;

(H) Your PMDS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must update the 6-hour rolling average of the detector response each hour with a one-hour block average that is the average of the detector responses over each 15-minute block; and

(I) If you exceed the alarm set-point (or if your PMDS malfunctions), you must comply with the corrective measures under paragraph (c)(9)(vii) of this section.

(ii) *Establishing the alarm set-point for operations under the Documentation of Compliance.* You must establish the alarm set-point for operations under the Documentation of Compliance (*i.e.*, after the compliance date but prior to submitting a Notification of Compliance

subsequent to conducting the initial comprehensive performance test) of an existing source as follows:

(A) You must obtain a minimum of three pairs of EPA Method 5 or 5I data, of appendix A–3 to part 60 of this chapter, and PMDS data to establish an approximate correlation curve. Data obtained up to 60 months prior to the compliance date may be used provided that the design and operation of the combustor or PMDS has not changed in a manner that may adversely affect the correlation of PM concentrations and PMDS response.

(B) You must request approval from the regulatory authority, in the continuous monitoring system test plan, of your determination whether multiple correlation curves are needed considering the design and operation of your combustor and PMDS.

(C) You must approximate the correlation of the reference method data to the PMDS data.

(1) You may assume a linear correlation of the PMDS response to particulate matter emission concentrations;

(2) You may include a zero point correlation value. To establish a zero point, you must follow one or more of the following steps:

(i) Zero point data for in-situ instruments should be obtained, to the extent possible, by removing the instrument from the stack and monitoring ambient air on a test bench;

(ii) Zero point data for extractive instruments should be obtained by removing the extractive probe from the stack and drawing in clean ambient air;

(iii) Zero point data also can be obtained by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (*e.g.*, when your process is not operating, but the fans are operating or your source is combusting only natural gas); and

(iv) If none of the steps in paragraphs (c)(9)(ii)(C)(2)(i) through (iii) of this section are possible, you must estimate the monitor response when no PM is in the flue gas (*e.g.*, 4 mA = 0 mg/acm).

(3) For reference method data that were obtained from runs during a test condition where controllable operating factors were held constant, you must average the test run averages of PM concentrations and PMDS responses to obtain a single pair of data for PM concentration and PMDS response. You may use this pair of data and the zero point to define a linear correlation model for the PMDS.

(D) You must establish the alarm set-point as the PMDS response that

corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. For reference method data that were obtained from runs during a test condition where controllable operating factors were held constant, you must use the average of the test run averages of PM concentrations for extrapolating the alarm set-point. The PM emission concentration used to extrapolate the alarm set-point must not exceed the PM emission standard, however.

(iii) *Establishing the initial alarm set-point for operations under the Notification of Compliance.* You must establish the initial alarm set-point for operations under the Notification of Compliance as provided by either paragraph (c)(9)(iii)(A) or (B) of this section. You must periodically revise the alarm set-point as provided by paragraph (c)(9)(iv) of this section.

(A) *Establishing the initial set-point without extrapolation.* (1) If you establish the initial alarm set-point without extrapolation, the alarm set-point is the average of the test run averages of the PMDS response during the runs of the comprehensive performance test that document compliance with the PM emission standard.

(2) During the comprehensive performance test, you may simulate PM emission concentrations at the upper end of the range of normal operations by means including feeding high levels of ash and detuning the emission control equipment.

(B) *Establishing the initial set-point by extrapolation.* You may extrapolate the particulate matter detector response to establish the alarm set-point under the following procedures:

(1) You must request approval from the regulatory authority, in the continuous monitoring system test plan, of the procedures you will use to establish an approximate correlation curve using the three pairs of EPA Method 5 or 5I data, of appendix A–3 of part 60 of this chapter, and PMDS data from the comprehensive performance test, the data pairs used to establish the correlation curve for the Documentation of Compliance under paragraph (c)(9)(ii) of this section, and additional data pairs, as warranted.

(2) You must request approval from the regulatory authority, in the continuous monitoring system test plan, of your determination of whether multiple correlation curves are needed considering the design and operation of your combustor and PMDS. If so, you must recommend the number of data

pairs needed to establish those correlation curves and how the data will be obtained.

(3) During the comprehensive performance test, you may simulate PM emission concentrations at the upper end of the range of normal operations by means including feeding high levels of ash and detuning the emission control equipment.

(4) Data obtained up to 60 months prior to the comprehensive performance test may be used provided that the design and operation of the combustor or PMDS has not changed in a manner that may adversely affect the correlation of PM concentrations and PMDS response.

(5) You may include a zero point correlation value. To establish a zero point, you must follow the procedures under paragraph (c)(9)(ii)(C)(2) of this section.

(6) You must use a least-squares regression model to correlate PM concentrations to PMDS responses for data pairs. You may assume a linear regression model approximates the relationship between PM concentrations and PMDS responses.

(7) You must establish the alarm set-point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. The emission concentration used to extrapolate the PMDS response must not exceed the PM emission standard.

(iv) *Revising the Notification of Compliance alarm set-point*—(A) *Revising set-points established without extrapolation.* If you establish the alarm set-point without extrapolation under paragraph (c)(9)(iii)(A) of this section, you must establish a new alarm set-point in the Notification of Compliance following each comprehensive performance test as the average of the test run averages of the PMDS response during the runs of the comprehensive performance test that document compliance with the PM emission standard.

(B) *Revising set-points established with extrapolation.* If you establish the alarm set-point by extrapolation under paragraph (c)(9)(iii)(B) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the procedures for periodically revising the alarm set-point, considering the additional data pairs obtained during periodic comprehensive performance tests and data pairs obtained from other tests, such as for quality assurance.

(v) *Quality assurance*—(A) *Set-points established without extrapolation.* If you establish the alarm set-point without extrapolation under paragraph (c)(9)(iii)(A) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below the average of the PM concentrations demonstrated during the comprehensive performance test. Your recommended quality assurance procedures may include periodic testing under as-found conditions (*i.e.*, normal operations) to obtain additional PM concentration and PMDS response run pairs, as warranted.

(B) *Set-points established with extrapolation.* If you establish the alarm set-point by extrapolation under paragraph (c)(9)(iii)(B) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below the value that correlated to the alarm set-point.

(vi) *PMDS are used for compliance assurance only.* For a PMDS for which the alarm set-point is established by extrapolation using a correlation curve under paragraphs (c)(9)(ii), (c)(9)(iii)(B), and (c)(9)(iv)(B) of this section, an exceedance of the PMDS response that appears to correlate with a PM concentration that exceeds the PM emission standard is not by itself evidence that the standard has been exceeded.

(vii) *PMDS corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a PMDS alarm or malfunction. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm or PMDS malfunction as well as the corrective measures taken to correct the control device or PMDS malfunction or minimize emissions as specified below. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(A) You must initiate the procedures used to determine the cause of the alarm or PMDS malfunction within 30 minutes of the time the alarm first sounds or the PMDS malfunctions; and

(B) You must alleviate the cause of the alarm or the PMDS malfunction by taking the necessary corrective measure(s) which may include shutting down the combustor.

(viii) *Excessive exceedances notification.* If you operate the combustor when the detector response exceeds the alarm set-point or when the PMDS is malfunctioning more than 5 percent of the time during any 6-month block time period, you must submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and the revisions to the design, operation, or maintenance of the combustor, emission control device, or PMDS you are taking to minimize exceedances. To document compliance with this requirement:

(A) You must keep records of the date, time, and duration of each alarm and PMDS malfunction, the time corrective action was initiated and completed, and a brief description of the cause of the alarm or PMDS malfunction and the corrective action taken;

(B) You must record the percent of the operating time during each 6-month period that the alarm sounds and the PMDS malfunctions;

(C) If inspection of the emission control device demonstrates that no corrective action is required, then no alarm time is counted; and

(D) If corrective action to the emission control device is required, each alarm shall be counted as a minimum of 1 hour. Each PMDS malfunction shall also be counted as a minimum of 1 hour.

(10) *Requirements for periods of startup*—(i) *Startup.* Startup means the period in which a hazardous waste combustor begins operating for any purpose. When startup is conducted under an otherwise applicable standard according to § 63.1206(b)(1)(ii), startup is defined in accordance with the otherwise applicable standard. The beginning and end of startup are defined as follows:

(A) For incinerators, startup begins with the firing of supplemental fuel in the combustion chamber or with transitioning from a period of shutdown. All air pollution control devices must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the hazardous waste combustor. Startup ends once the system has stabilized but no later than 15 minutes after either hazardous waste that is not fed in accordance with § 63.1206(c)(2)(v)(B) or any waste material that is not supplemental fuel is fed into the

hazardous waste combustor, whichever occurs first.

(B) For cement kilns and lightweight aggregate kilns, startup begins when a kiln either begins firing supplemental fuel or transitions from a period of shutdown. All air pollution control devices must be in operation as expeditiously as possible and prior to the introduction of kiln feed or any waste material that is not supplemental fuel into the kiln. Startup ends 120 minutes after the continuous introduction of kiln feed, when the feed rate exceeds 60 percent of the kiln design limitation rate, or 15 minutes after hazardous waste that is not fed in accordance with § 63.1206(c)(2)(v)(B) is fed into the hazardous waste combustor, whichever occurs first. Cement kilns may fire traditional fuels as defined in § 241.2 of this chapter once the hazardous waste combustor achieves 1200 degrees Fahrenheit measured at a location that best represents, as practicable, the bulk gas temperature in the combustion zone and all air pollution control devices are operational.

(C) For solid fuel boilers and liquid fuel boilers, startup begins with either the first-ever firing of supplemental fuel in a boiler for the purpose of supplying useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or producing electricity or the firing of fuel in a boiler for any purpose after a shutdown event. All air pollution control devices must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the boiler. Startup ends at the earliest of the following: four hours after when the boiler supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes; the boiler produces electricity; or 15 minutes after either hazardous waste that is not fed in accordance with § 63.1206(c)(2)(v)(B) or any waste material that is not supplemental fuel is fed into the boiler.

(D) For hydrochloric acid production furnaces, startup begins when a hydrochloric acid production furnace either begins firing supplemental fuel or transitions from a period of shutdown. All air pollution control devices must be in operation as expeditiously as possible and prior to the introduction of any waste material that is not supplemental fuel into the hydrochloric acid production furnace. Startup ends either 120 minutes after the continuous introduction of materials intended to produce hydrochloric acid to the hydrochloric acid production furnace or 15 minutes after either hazardous waste that is not fed in accordance with

§ 63.1206(c)(2)(v)(B) or any waste material that is not supplemental fuel is fed into the hydrochloric acid production furnace, whichever is earlier.

(E) Notwithstanding paragraphs (A) through (D) of this section, transitioning from an otherwise applicable standard initiates a period of startup lasting no more than 15 minutes in duration.

(ii) *Beginning hazardous waste feed.* You shall not start hazardous waste feed to the combustion chamber until the operating parameters and emission levels are within the limits specified in the Notification of Compliance under §§ 63.1207(j) and 63.1210(d), unless you do so in accordance with § 63.1206(c)(2)(v)(B).

(iii) *Supplemental fuel.* Supplemental fuel is defined as one or a combination of the following fuels: natural gas, synthetic natural gas, propane, other gas 1 fuels, distillate oil, syngas, ultra-low sulfur diesel, kerosene, hydrogen, refinery gas, liquefied petroleum gas, and any other fuel approved in the startup, shutdown, and malfunction plan.

(A) For solid fuel boilers, coal is included in the definition of supplemental fuel.

(B) Other gas 1 fuels means a gaseous fuel that is not natural gas, refinery gas, or a hazardous waste and does not exceed a maximum mercury concentration of 40 micrograms per cubic meter of gas. The basis for determining that any gas qualifies as an other gas 1 fuel must be specified in the startup, shutdown, and malfunction plan.

(iv) *Startup, shutdown, and malfunction plan.* You must operate in accordance with your startup, shutdown, and malfunction plan during periods of startup.

(11) *Requirements for periods of shutdown—(i) Shutdown.* Shutdown means the period in which a hazardous waste combustor ceases operating for any purpose. Operation under an otherwise applicable standard according to § 63.1206(b)(1)(ii) is not considered a period of shutdown. When shutdown is conducted under an otherwise applicable standard according to § 63.1206(b)(1)(ii), shutdown is defined in accordance with the otherwise applicable standard. The beginning and end of shutdown are defined as follows:

(A) For incinerators, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and the feed of non-hazardous waste materials to the combustion chamber is cut off and ends when fire is extinguished in

the combustion chamber, the incinerator enters another mode of operation, or when a startup is initiated.

(B) For cement kilns and lightweight aggregate kilns, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and kiln feed is halted and ends when continuous kiln rotation ceases, the kiln enters another mode of operation, or when a startup is initiated.

(C) For solid fuel boilers and liquid fuel boilers, shutdown begins when the boiler no longer supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler, whichever is earlier, and when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time. Shutdown ends when the boiler no longer supplies useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is being combusted in the boiler, the boiler enters another mode of operation, or when startup is initiated.

(D) For hydrochloric acid production furnaces, shutdown begins when hazardous waste feed to the combustion chamber has been cut off for a period of time not less than the hazardous waste residence time and raw material feed to the hydrochloric acid production furnace is halted. Shutdown ends when the hydrochloric acid production furnace flame is extinguished, the hydrochloric acid production furnace enters another mode of operation, or when a startup is initiated.

(ii) *Hazardous waste feed.* You shall not feed hazardous waste to the combustion chamber during shutdown, unless you do so in accordance with § 63.1206(c)(2)(v)(B).

(iii) *Supplemental fuel.* You may feed supplemental fuel to the combustion chamber during shutdown. Supplemental fuel is as defined in § 63.1206(c)(10)(iii).

(iv) *Startup, shutdown, and malfunction plan.* You must operate in accordance with your startup, shutdown, and malfunction plan during periods of shutdown.

■ 5. Revise § 63.1207 to read as follows:

§ 63.1207 What are the performance testing requirements?

(a) *General.* The provisions of § 63.7 apply, except § 63.7(e)(1) and as noted below.

(b) *Types of performance tests—(1) Comprehensive performance test.* You must conduct comprehensive

performance tests to demonstrate compliance with the emission standards provided by this subpart, establish limits for the operating parameters provided by § 63.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

(2) *Confirmatory performance test.* You must conduct confirmatory performance tests to:

(i) Demonstrate compliance with the dioxin/furan emission standard when the source operates under normal operating conditions; and

(ii) Conduct a performance evaluation of continuous monitoring systems required for compliance assurance with the dioxin/furan emission standard under § 63.1209(k).

(3) *One-Time Dioxin/Furan Test for Sources Not Subject to a Numerical Dioxin/Furan Standard.* For solid fuel boilers and hydrochloric acid production furnaces, for lightweight aggregate kilns that are not subject to a numerical dioxin/furan emission standard under § 63.1221, and liquid fuel boilers that are not subject to a numerical dioxin/furan emission standard under § 63.1217, you must conduct a one-time emission test for dioxin/furan under feed and operating conditions that are most likely to reflect daily maximum operating variability, similar to a dioxin/furan comprehensive performance test.

(i) You must conduct the dioxin/furan emissions test no later than the deadline for conducting the initial comprehensive performance test.

(ii) You may use dioxin/furan emissions data from previous testing to meet this requirement, provided that:

(A) The testing was conducted under feed and operating conditions that are most likely to reflect daily maximum operating variability, similar to a dioxin/furan compliance test;

(B) You have not changed the design or operation of the source in a manner that could significantly affect stack gas dioxin/furan emission concentrations; and

(C) The data meet quality assurance objectives that may be determined on a site-specific basis.

(iii) You may use dioxin/furan emissions data from a source to represent emissions from another on-site source in lieu of testing (*i.e.*, data in lieu of testing) if the design and operation, including hazardous waste feed and other feedstreams, of the sources are identical.

(iv) You must include the results of the one-time dioxin/furan emissions test with the results of the initial

comprehensive performance test in the Notification of Compliance.

(v) You must repeat the dioxin/furan emissions test if you change the design or operation of the source in a manner that may increase dioxin/furan emissions.

(vi) Sources that are required to perform the one-time dioxin/furan test pursuant to paragraph (b)(3) of this section are not required to perform confirmatory performance tests.

(c) *Initial comprehensive performance test*—(1) *Test date.* Except as provided by paragraphs (c)(2) and (3) of this section, you must commence the initial comprehensive performance test not later than six months after the compliance date.

(2) *Data in lieu of the initial comprehensive performance test.* (i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Was initiated after 54 months prior to the compliance date, except as provided by paragraph (c)(2)(iii) or (iv) of this section;

(B) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results demonstrate compliance with the applicable standards;

(C) Was in conformance with the requirements of paragraph (g)(1) of this section; and

(D) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

(ii) You must submit data in lieu of the initial comprehensive performance test in lieu of (*i.e.*, if the data are in lieu of all performance testing) or with the notification of performance test required under paragraph (e) of this section.

(iii) The data in lieu test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply for the duration of the interim standards (*i.e.*, the standards published in the **Federal Register** on February 13, 2002, 67 FR 6792). See 40 CFR parts 63, 264, 265, 266, 270, and 271 revised as of July 1, 2002. Paragraph (c)(2)(i)(A) of this section does not apply until EPA promulgates permanent replacement standards pursuant to the Settlement Agreement noticed in the **Federal Register** on November 16, 2001 (66 FR 57715).

(iv) The data in lieu test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply to DRE data provided you do not feed hazardous waste at a location in the combustion system other than the normal flame zone.

(3) For hydrogen fluoride and hydrogen cyanide emission standards, the Notification of Compliance for the initial compliance test must be postmarked no later than the relevant compliance dates in § 63.1206(a). Data in lieu of the initial demonstration of compliance may be submitted in accordance with paragraph (c)(2) of this section. The initial compliance test must follow the notification requirements prescribed for a comprehensive performance test, and may coincide with a comprehensive performance test. After the initial compliance test, compliance with hydrogen fluoride and hydrogen cyanide emission limits must be demonstrated during each subsequent comprehensive performance test.

(d) *Frequency of testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must conduct testing periodically as prescribed in paragraphs (d)(1) through (3) of this section. The date of commencement of the initial comprehensive performance test is the basis for establishing the deadline to commence the initial confirmatory performance test and the next comprehensive performance test. You may conduct performance testing at any time prior to the required date. The deadline for commencing subsequent confirmatory and comprehensive performance testing is based on the date of commencement of the previous comprehensive performance test. Unless the Administrator grants a time extension under paragraph (i) of this section, you must conduct testing as follows:

(1) *Comprehensive performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test used to show compliance with § 63.1216, § 63.1217, § 63.1218, § 63.1219, § 63.1220, or § 63.1221. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

(2) *Confirmatory performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence confirmatory performance testing no later than 31 months after the date of commencing the previous comprehensive performance test used to show compliance with § 63.1217, § 63.1219, § 63.1220, or § 63.1221. If you submit data in lieu of the initial performance

test, you must commence the initial confirmatory performance test within 31 months of the date six months after the compliance date. To ensure that the confirmatory test is conducted approximately midway between comprehensive performance tests, the Administrator will not approve a test plan that schedules testing within 18 months of commencing the previous comprehensive performance test.

(3) *Duration of testing.* You must complete performance testing within 60 days after the date of commencement, unless the Administrator determines that a time extension is warranted based on your documentation in writing of factors beyond your control that prevent you from meeting the 60-day deadline.

(4) *Applicable testing requirements under the interim standards—(i) Waiver of periodic comprehensive performance tests.* Except as provided by paragraph (c)(2) of this section, you must conduct only an initial comprehensive performance test under the interim standards (§§ 63.1203 through 63.1205); all subsequent comprehensive performance testing requirements are waived under the interim standards. The provisions in the introductory text to paragraph (d) and in paragraph (d)(1) of this section apply only to tests used to demonstrate compliance with the standards under §§ 63.1219 through 63.1221.

(ii) *Waiver of confirmatory performance tests.* You are not required to conduct a confirmatory test under the interim standards (§§ 63.1203 through 63.1205). The confirmatory testing requirements in the introductory text to paragraph (d) and in paragraph (d)(2) of this section apply only after you have demonstrated compliance with the standards under §§ 63.1219 through 63.1221.

(e) *Notification of performance test and CMS performance evaluation, and approval of test plan and CMS performance evaluation plan.* (1) The provisions of §§ 63.7(b) and (c) and 63.8(e) apply, except:

(i) *Comprehensive performance test.* You must submit to the Administrator a notification of your intention to conduct a comprehensive performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least one year before the performance test and performance evaluation are scheduled to begin.

(A) The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 9 months after receipt of the original plan.

(B) You must submit to the Administrator a notification of your intention to conduct the comprehensive performance test at least 60 calendar days before the test is scheduled to begin.

(ii) *Confirmatory performance test.* You must submit to the Administrator a notification of your intention to conduct a confirmatory performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan for those parameters required under § 63.1207(b)(2)(ii) at least 60 calendar days before the performance test is scheduled to begin. The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 30 calendar days after receipt of the original test plans.

(2) You must make your site-specific test plan and CMS performance evaluation test plan available to the public for review no later than 60 calendar days before initiation of the test. You must issue a public notice to all persons on your facility/public mailing list (developed pursuant to §§ 70.7(h), 71.11(d)(3)(i)(E) and 124.10(c)(1)(ix) of this chapter) announcing the availability of the test plans and the location where the test plans are available for review. The test plans must be accessible to the public for 60 calendar days, beginning on the date that you issue your public notice. The location must be unrestricted and provide access to the public during reasonable hours and provide a means for the public to obtain copies. The notification must include the following information at a minimum:

(i) The name and telephone number of the source's contact person;

(ii) The name and telephone number of the regulatory agency's contact person;

(iii) The location where the test plans and any necessary supporting documentation can be reviewed and copied;

(iv) The time period for which the test plans will be available for public review; and

(v) An expected time period for commencement and completion of the performance test and CMS performance evaluation test.

(3) *Petitions for time extension if Administrator fails to approve or deny test plans.* You may petition the Administrator under § 63.7(h) to obtain a "waiver" of any performance test—initial or periodic performance test; comprehensive or confirmatory test. The "waiver" would be implemented as an

extension of time to conduct the performance test at a later date.

(i) *Qualifications for the waiver.* (A) You may not petition the Administrator for a waiver under this section if the Administrator has issued a notification of intent to deny your test plan(s) under § 63.7(c)(3)(i)(B);

(B) You must submit a site-specific emissions testing plan and a continuous monitoring system performance evaluation test plan at least one year before a comprehensive performance test is scheduled to begin as required by paragraph (c)(1) of this section, or at least 60 days before a confirmatory performance test is scheduled to begin as required by paragraph (d) of this section. The test plans must include all required documentation, including the substantive content requirements of paragraph (f) of this section and § 63.8(e); and

(C) You must make a good faith effort to accommodate the Administrator's comments on the test plans.

(ii) *Procedures for obtaining a waiver and duration of the waiver.* (A) You must submit to the Administrator a waiver petition or request to renew the petition under § 63.7(h) separately for each source at least 60 days prior to the scheduled date of the performance test;

(B) The Administrator will approve or deny the petition within 30 days of receipt and notify you promptly of the decision;

(C) The Administrator will not approve an individual waiver petition for a duration exceeding 6 months;

(D) The Administrator will include a sunset provision in the waiver ending the waiver within 6 months;

(E) You may submit a revised petition to renew the waiver under § 63.7(h)(3)(iii) at least 60 days prior to the end date of the most recently approved waiver petition;

(F) The Administrator may approve a revised petition for a total waiver period up to 12 months.

(iii) *Content of the waiver.* (A) You must provide documentation to enable the Administrator to determine that the source is meeting the relevant standard(s) on a continuous basis as required by § 63.7(h)(2). For extension requests for the initial comprehensive performance test, you must submit your Documentation of Compliance to assist the Administrator in making this determination.

(B) You must include in the petition information justifying your request for a waiver, such as the technical or economic infeasibility, or the impracticability, of the affected source performing the required test, as required by § 63.7(h)(3)(iii).

(iv) *Public notice.* At the same time that you submit your petition to the Administrator, you must notify the public (e.g., distribute a notice to the facility/public mailing list developed pursuant to §§ 70.7(h), 71.11(d)(3)(i)(E) and 124.10(c)(1)(ix) of this chapter) of your petition to waive a performance test. The notification must include all of the following information at a minimum:

(A) The name and telephone number of the source's contact person;

(B) The name and telephone number of the regulatory agency's contact person;

(C) The date the source submitted its site-specific performance test plan and CMS performance evaluation test plans; and

(D) The length of time requested for the waiver.

(f) *Content of performance test plan.* The provisions of § 63.7(c)(2)(i) through (iii) and (v) regarding the content of the test plan apply. In addition, you must include the following information in the test plan:

(1) *Content of comprehensive performance test plan.* (i) An analysis of each feedstream, including hazardous waste, other fuels, and industrial furnace feedstocks, as fired, that includes:

(A) Heating value, levels of ash (for hazardous waste incinerators only), levels of semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic); and

(B) Viscosity or description of the physical form of the feedstream;

(ii) For organic hazardous air pollutants established by 42 U.S.C. 7412(b)(1), as amended by subpart C of this part:

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the

materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standards of this subpart continue to be representative of the most difficult to destroy organic compounds in your hazardous waste feedstreams;

(iii) A detailed engineering description of the hazardous waste combustor, including:

(A) Manufacturer's name and model number of the hazardous waste combustor;

(B) Type of hazardous waste combustor;

(C) Maximum design capacity in appropriate units;

(D) Description of the feed system for each feedstream;

(E) Capacity of each feed system;

(F) Description of automatic hazardous waste feed cutoff system(s);

(G) Description of the design, operation, and maintenance practices for any air pollution control system; and

(H) Description of the design, operation, and maintenance practices of any stack gas monitoring and pollution control monitoring systems;

(iv) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(v) A detailed test schedule for each hazardous waste for which the performance test is planned, including date(s), duration, quantity of hazardous waste to be burned, and other relevant factors;

(vi) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feedrate for each feed system, and, as appropriate, the feedrates of other fuels and feedstocks, and any other relevant parameters that may affect the ability of the hazardous waste combustor to meet the emission standards;

(vii) A description of, and planned operating conditions for, any emission control equipment that will be used;

(viii) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction;

(ix) A determination of the hazardous waste residence time as required by § 63.1206(b)(11);

(x) If you are requesting to extrapolate metal feedrate limits from

comprehensive performance test levels under § 63.1209(l)(1)(v) or (n)(2)(vii):

(A) A description of the extrapolation methodology and rationale for how the approach ensures compliance with the emission standards;

(B) Documentation of the historical range of normal (i.e., other than during compliance testing) metals feedrates for each feedstream;

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that the extrapolated feedrate limits adequately assure compliance with the emission standards;

(xi) If you do not continuously monitor regulated constituents in natural gas, process air feedstreams, and feedstreams from vapor recovery systems under § 63.1209(c)(5), you must include documentation of the expected levels of regulated constituents in those feedstreams;

(xii) Documentation justifying the duration of system conditioning required to ensure the combustor has achieved steady-state operations under performance test operating conditions, as provided by paragraph (g)(1)(iii) of this section;

(xiii) For cement kilns with in-line raw mills, if you elect to use the emissions averaging provision of this subpart, you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required by the emission averaging provision;

(xiv) For preheater or preheater/precalfiner cement kilns with dual stacks, if you elect to use the emissions averaging provision of this subpart, you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required by the emission averaging provision;

(xv) If you are subject to the work practice standard under § 63.1209(s)(1) and are complying under § 63.1209(s)(1)(iii), the demonstration of maximum hydrogen fluoride MTEC and plan for a one-time hydrogen fluoride emissions test if required;

(xvi) If you are not required to conduct performance testing to document compliance with the mercury, semivolatile metals, low volatile metals, hydrogen fluoride, or hydrogen chloride/chlorine gas emission standards under paragraph (m) of this section, you must include with the comprehensive performance test

plan documentation of compliance with the provisions of that section.

(xvii) If you propose to use a surrogate for measuring or monitoring gas flowrate, you must document in the comprehensive performance test plan that the surrogate adequately correlates with gas flowrate, as required by paragraph (m)(5) of this section, and § 63.1209(j)(2), (k)(3), (m)(2)(i), (n)(5)(i), and (o)(2)(i).

(xviii) You must submit an application to request alternative monitoring under § 63.1209(g)(1) not later than with the comprehensive performance test plan, as required by § 63.1209(g)(1)(iii)(A).

(xix) You must document the temperature location measurement in the comprehensive performance test plan, as required by § 63.1209(j)(1)(i) and (k)(2)(i).

(xx) If your source is equipped with activated carbon injection, you must document in the comprehensive performance test plan:

(A) The manufacturer specifications for minimum carrier fluid flowrate or pressure drop, as required by § 63.1209(k)(6)(ii); and

(B) Key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, if you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, as required by § 63.1209(k)(6)(iii).

(xxi) If your source is equipped with a carbon bed system, and you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, you must include in the comprehensive performance test plan key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, as required by § 63.1209(k)(7)(ii).

(xxii) If you feed a dioxin/furan inhibitor into the combustion system, you must document in the comprehensive performance test plan key parameters that affect the effectiveness of the inhibitor, and the operating limits you establish for those parameters based on the inhibitor fed during the performance test, if you elect not to specify and use the brand and type of inhibitor used during the comprehensive performance test, as required by § 63.1209(k)(9)(ii).

(xxiii) If your source is equipped with a wet scrubber and you elect to monitor solids content of the scrubber liquid manually but believe that hourly monitoring of solids content is not warranted, you must support an

alternative monitoring frequency in the comprehensive performance test plan, as required by § 63.1209(m)(1)(i)(B)(1)(i).

(xxiv) If your source is equipped with a particulate matter control device other than a wet scrubber, baghouse, or electrostatic precipitator, you must include in the comprehensive performance test plan:

(A) Documentation to support the operating parameter limits you establish for the control device, as required by § 63.1209(m)(1)(iv)(A)(4); and

(B) Support for the use of manufacturer specifications if you recommend such specifications in lieu of basing operating limits on performance test operating levels, as required by § 63.1209(m)(1)(iv)(D).

(xxv) If your source is equipped with a dry scrubber to control hydrogen chloride and chlorine gas, you must document in the comprehensive performance test plan key parameters that affect adsorption, and the limits you establish for those parameters based on the sorbent used during the performance test, if you elect not to specify and use the brand and type of sorbent used during the comprehensive performance test, as required by § 63.1209(o)(4)(iii)(A); and

(xxvi) For purposes of calculating semivolatile metal, low volatile metal, mercury, total fluorine (organic and inorganic), and total chlorine (organic and inorganic), and ash feedrate limits, a description of how you will handle performance test feedstream analytical results that determines these constituents are not present at detectable levels.

(xxvii) Such other information as the Administrator reasonably finds necessary to determine whether to approve the performance test plan.

(2) *Content of confirmatory test plan.*

(i) A description of your normal hydrocarbon or carbon monoxide operating levels, as specified in paragraph (g)(2)(i) of this section, and an explanation of how these normal levels were determined;

(ii) A description of your normal applicable operating parameter levels, as specified in paragraph (g)(2)(ii) of this section, and an explanation of how these normal levels were determined;

(iii) A description of your normal chlorine operating levels, as specified in paragraph (g)(2)(iii) of this section, and an explanation of how these normal levels were determined;

(iv) If you use carbon injection or a carbon bed, a description of your normal cleaning cycle of the particulate matter control device, as specified in paragraph (g)(2)(iv) of this section, and

an explanation of how these normal levels were determined;

(v) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(vi) A detailed test schedule for each hazardous waste for which the performance test is planned, including date(s), duration, quantity of hazardous waste to be burned, and other relevant factors;

(vii) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feedrate for each feed system, and, as appropriate, the feedrates of other fuels and feedstocks, and any other relevant parameters that may affect the ability of the hazardous waste combustor to meet the dioxin/furan emission standard;

(viii) A description of, and planned operating conditions for, any emission control equipment that will be used;

(ix) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction; and

(x) Such other information as the Administrator reasonably finds necessary to determine whether to approve the confirmatory test plan.

(g) *Operating conditions during testing.* You must comply with the provisions of § 63.7(e)(2) through (4). The owner or operator may not conduct performance tests during periods of startup, shutdown, or malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent the entire range of normal operation, including operational conditions for maximum emissions. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

Conducting performance testing under operating conditions representative of the extreme range of normal conditions is consistent with the requirements of §§ 63.6(f)(2)(iii)(B) and 63.1207 to conduct performance testing under representative operating conditions.

(1) *Comprehensive performance testing—(i) Operations during testing.* For the following parameters, you must operate the combustor during the performance test under normal conditions (or conditions that will result in higher than normal emissions):

(A) *Chlorine feedrate*. You must feed normal (or higher) levels of chlorine during the dioxin/furan performance test;

(B) *Ash feedrate*. For hazardous waste incinerators, you must conduct the following tests when feeding normal (or higher) levels of ash: The semivolatile metal and low volatile metal performance tests; and the dioxin/furan and mercury performance tests if activated carbon injection or a carbon bed is used; and

(C) *Cleaning cycle of the particulate matter control device*. You must conduct the following tests when the particulate matter control device undergoes its normal (or more frequent) cleaning cycle: The particulate matter, semivolatile metal, and low volatile metal performance tests; and the dioxin/furan and mercury performance tests if activated carbon injection or a carbon bed is used.

(ii) *Modes of operation*. Given that you must establish limits for the applicable operating parameters specified in § 63.1209 based on operations during the comprehensive performance test, you may conduct testing under two or more operating modes to provide operating flexibility.

(iii) *Steady-state conditions*. (A) Prior to obtaining performance test data, you must operate under performance test conditions until you reach steady-state operations with respect to emissions of pollutants you must measure during the performance test and operating parameters under § 63.1209 for which you must establish limits. During system conditioning, you must ensure that each operating parameter for which you must establish a limit is held at the level planned for the performance test. You must include documentation in the performance test plan under paragraph (f) of this section justifying the duration of system conditioning.

(B) If you own or operate a hazardous waste cement kiln that recycles collected particulate matter (*i.e.*, cement kiln dust) into the kiln, you must sample and analyze the recycled particulate matter prior to obtaining performance test data for levels of selected metals that must be measured during performance testing to document that the system has reached steady-state conditions (*i.e.*, that metals levels have stabilized). You must document the rationale for selecting metals that are indicative of system equilibrium and include the information in the performance test plan under paragraph (f) of this section. To determine system equilibrium, you must sample and analyze the recycled particulate matter hourly for each selected metal, unless

you submit in the performance test plan a justification for reduced sampling and analysis and the Administrator approves in writing a reduced sampling and analysis frequency.

(2) *Confirmatory performance testing*. You must conduct confirmatory performance testing for dioxin/furan under normal operating conditions for the following parameters:

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be below the emission limit established for your hazardous waste combustor;

(ii) Each operating limit (specified in § 63.1209) established to maintain compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(v) of this section. The average value is defined as the sum of the rolling average values recorded over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

(iii) You must feed chlorine at normal feedrates or greater; and

(iv) If the combustor is equipped with carbon injection or carbon bed, normal cleaning cycle of the particulate matter control device.

(v) The Administrator may approve an alternative range to that required by paragraphs (g)(2)(i) and (ii) of this section if you document in the confirmatory performance test plan that it may be problematic to maintain the required range during the test. In addition, when making the finding of compliance, the Administrator may consider test conditions outside of the range specified in the test plan based on a finding that you could not reasonably maintain the range specified in the test plan and considering factors including whether the time duration and level of the parameter when operations were out of the specified range were such that operations during the confirmatory test are determined to be reasonably representative of normal operations. In addition, the Administrator will consider the proximity of the emission test results to the standard.

(h) *Operating conditions during subsequent testing*. (1) Current operating parameter limits established under § 63.1209 are waived during subsequent comprehensive performance testing.

(2) Current operating parameter limits are also waived during pretesting prior to comprehensive performance testing

for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator) under an approved test plan or if the source records the results of the pretesting. Pretesting means:

(i) Operations when stack emissions testing for dioxin/furan, mercury, semivolatile metals, low volatile metals, particulate matter, or hydrogen chloride/chlorine gas is being performed; and

(ii) Operations to reach steady-state operating conditions prior to stack emissions testing under paragraph (g)(1)(iii) of this section.

(i) *Time extension for subsequent performance tests*. After the initial comprehensive performance test, you may request up to a one-year time extension for conducting a comprehensive or confirmatory performance test to consolidate performance testing with other state or federally required emission testing, or for other reasons deemed acceptable by the Administrator. If the Administrator grants a time extension for a comprehensive performance test, the deadlines for commencing the next comprehensive and confirmatory tests are based on the date that the subject comprehensive performance test commences.

(1) You must submit in writing to the Administrator any request under this paragraph for a time extension for conducting a performance test.

(2) You must include in the request for an extension for conducting a performance test the following:

(i) A description of the reasons for requesting the time extension;

(ii) The date by which you will commence performance testing.

(3) The Administrator will notify you in writing of approval or intention to deny approval of your request for an extension for conducting a performance test within 30 calendar days after receipt of sufficient information to evaluate your request. The 30-day approval or denial period will begin after you have been notified in writing that your application is complete. The Administrator will notify you in writing whether the application contains sufficient information to make a determination within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that you submit.

(4) When notifying you that your application is not complete, the Administrator will specify the information needed to complete the application. The Administrator will also provide notice of opportunity for you to

present, in writing, within 30 calendar days after notification of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(5) Before denying any request for an extension for performance testing, the Administrator will notify you in writing of the Administrator's intention to issue the denial, together with:

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for you to present in writing, within 15 calendar days after notification of the intended denial, additional information or arguments to the Administrator before further action on the request.

(6) The Administrator's final determination to deny any request for an extension will be in writing and will set forth specific grounds upon which the denial is based. The final determination will be made within 30 calendar days after the presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(j) *Notification of compliance*—(1) *Comprehensive performance test.* (i) Except as provided by paragraphs (j)(4) and (5) of this section, within 90 days of completion of a comprehensive performance test, you must postmark a Notification of Compliance documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under § 63.1209.

(ii) Upon postmark of the Notification of Compliance, you must comply with all operating requirements specified in the Notification of Compliance in lieu of the limits specified in the Documentation of Compliance required under § 63.1211(c).

(2) *Confirmatory performance test.* Except as provided by paragraph (j)(4) of this section, within 90 days of completion of a confirmatory performance test, you must postmark a Notification of Compliance documenting compliance or noncompliance with the applicable dioxin/furan emission standard.

(3) See §§ 63.7(g), 63.9(h), and 63.1210(d) for additional requirements pertaining to the Notification of Compliance (*e.g.*, you must include results of performance tests in the Notification of Compliance). Beginning November 30, 2026, you must include in the Notification of Compliance a summary of the results of performance test and the performance test report

must be submitted according to § 63.1211(f).

(4) *Time extension.* You may submit a written request to the Administrator for a time extension documenting that, for reasons beyond your control, you may not be able to meet the 90-day deadline for submitting the Notification of Compliance after completion of testing. The Administrator will determine whether a time extension is warranted.

(5) *Early compliance.* If you conduct the initial comprehensive performance test prior to the compliance date, you must postmark the Notification of Compliance within 90 days of completion of the performance test or by the compliance date, whichever is later.

(k) *Failure to submit a timely notification of compliance.* (1) If you fail to postmark a Notification of Compliance by the specified date, you must cease hazardous waste burning immediately.

(2) Prior to submitting a revised Notification of Compliance as provided by paragraph (k)(3) of this section, you may burn hazardous waste only for the purpose of pretesting or comprehensive performance testing and only for a maximum of 720 hours (renewable at the discretion of the Administrator).

(3) You must submit to the Administrator a Notification of Compliance subsequent to a new comprehensive performance test before resuming hazardous waste burning.

(l) *Failure of performance test*—(1) Comprehensive performance test. The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to your compliance date.

(i) If you determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that you have exceeded any emission standard during a comprehensive performance test for a mode of operation, you must cease hazardous waste burning immediately under that mode of operation. You must make this determination within 90 days following completion of the performance test.

(ii) If you have failed to demonstrate compliance with the emission standards for any mode of operation:

(A) Prior to submitting a revised Notification of Compliance as provided by paragraph (l)(1)(ii)(C) of this section, you may burn hazardous waste only for the purpose of pretesting or comprehensive performance testing under revised operating conditions, and only for a maximum of 720 hours (renewable at the discretion of the

Administrator), except as provided by paragraph (l)(3) of this section;

(B) You must conduct a comprehensive performance test under revised operating conditions following the requirements for performance testing of this section; and

(C) You must submit to the Administrator a Notification of Compliance subsequent to the new comprehensive performance test.

(2) *Confirmatory performance test.* If you determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that you have failed the dioxin/furan emission standard during a confirmatory performance test, you must cease burning hazardous waste immediately. You must make this determination within 90 days following completion of the performance test. To burn hazardous waste in the future:

(i) You must submit to the Administrator for review and approval a test plan to conduct a comprehensive performance test to identify revised limits on the applicable dioxin/furan operating parameters specified in § 63.1209(k);

(ii) You must submit to the Administrator a Notification of Compliance with the dioxin/furan emission standard under the provisions of paragraphs (j) and (k) of this section and this paragraph (l). You must include in the Notification of Compliance the revised limits on the applicable dioxin/furan operating parameters specified in § 63.1209(k); and

(iii) Until the Notification of Compliance is submitted, you must not burn hazardous waste except for purposes of pretesting or confirmatory performance testing, and for a maximum of 720 hours (renewable at the discretion of the Administrator), except as provided by paragraph (l)(3) of this section.

(3) You may petition the Administrator to obtain written approval to burn hazardous waste in the interim prior to submitting a Notification of Compliance for purposes other than testing or pretesting. You must specify operating requirements, including limits on operating parameters, that you determine will ensure compliance with the emission standards of this subpart based on available information including data from the failed performance test. The Administrator will review, modify as necessary, and approve if warranted the interim operating requirements. An approval of interim operating requirements will include a schedule for submitting a Notification of Compliance.

(m) *Waiver of performance test.* You are not required to conduct performance tests to document compliance with the mercury, semivolatile metals, low volatile metals, hydrogen fluoride, or hydrogen chloride/chlorine gas emission standards under the conditions specified in paragraph (m)(1) or (2) of this section. The waiver provisions of this paragraph apply in addition to the provisions of § 63.7(h).

(1) *Emission standards based on exhaust gas flow rate.* (i) You are deemed to be in compliance with an emission standard based on the volumetric flow rate of exhaust gas (*i.e.*, µg/dscm or ppmv) if the maximum theoretical emission concentration (MTEC) does not exceed the emission standard over the relevant averaging period specified under § 63.1209(l), (n), and (o) of this section for the standard:

(A) Determine the feedrate of mercury, semivolatile metals, low volatile metals, total fluorine or fluoride, or total chlorine and chloride from all feedstreams;

(B) Determine the stack gas flowrate; and

(C) Calculate a MTEC for each standard assuming all mercury, semivolatile metals, low volatile metals, total fluorine (organic and inorganic), or total chlorine (organic and inorganic) from all feedstreams is emitted;

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, total fluorine and fluoride, and total chlorine and chloride from all feedstreams according to § 63.1209(c);

(B) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(C) Continuously calculate and record in the operating record the MTEC under the procedures of paragraph (m)(1)(i) of this section; and

(D) Interlock the MTEC calculated in paragraph (m)(1)(i)(C) of this section to the AWFCO system to stop hazardous waste burning when the MTEC exceeds the emission standard.

(iii) In lieu of the requirement in paragraphs (m)(1)(ii)(C) and (D) of this section, you may:

(A) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatile metals, low volatile metals, total fluorine and fluoride, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(1)(i)(C) of this section is

below the applicable emission standard; and

(B) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(1)(iii)(A) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatile metals, low volatile metals, total fluorine and fluoride, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(1)(iii)(A) of this section.

(2) *Emission standards based on hazardous waste thermal concentration.*

(i) You are deemed to be in compliance with an emission standard specified on a hazardous waste thermal concentration basis (*i.e.*, pounds emitted per million Btu of heat input) if the HAP thermal concentration in the waste feed does not exceed the allowable HAP thermal concentration emission rate.

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all hazardous waste feedstreams in accordance with § 63.1209(c);

(B) Determine and record the higher heating value of each hazardous waste feed;

(C) Continuously calculate and record the thermal feed rate of all hazardous waste feedstreams by summing the products of each hazardous waste feed rate multiplied by the higher heating value of that hazardous waste;

(D) Continuously calculate and record the total HAP thermal feed concentration for each constituent by dividing the HAP feedrate determined in paragraph (m)(2)(ii)(A) of this section by the thermal feed rate determined in paragraph (m)(2)(ii)(C) of this section for all hazardous waste feedstreams;

(E) Interlock the HAP thermal feed concentration for each constituent with the AWFCO to stop hazardous waste feed when the thermal feed concentration exceeds the applicable thermal emission standard.

(3) When you determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride for purposes of this provision, except as provided by paragraph (m)(4) of this section, you must assume that the analyte is present at the full detection limit when the feedstream analysis determines that the analyte is not detected in the feedstream.

(4) Owners and operators of hazardous waste burning cement kilns and lightweight aggregate kilns may assume that mercury is present in raw material at half the detection limit when

the raw material feedstream analysis determines that mercury is not detected.

(5) You must state in the site-specific test plan that you submit for review and approval under paragraph (e) of this section that you intend to comply with the provisions of this paragraph. You must include in the test plan documentation that any surrogate that is proposed for gas flowrate adequately correlates with the gas flowrate.

■ 6. Revise § 63.1208 to read as follows:

§ 63.1208 What are the test methods?

(a) [Reserved].

(b) *Test methods.* You must use the following test methods to determine compliance with the emissions standards of this subpart:

(1) *Dioxins and furans.* (i) To determine compliance with the emission standard for dioxins and furans, you must use:

(A) Before June 3, 2029, EPA Method 0023A, Sampling Method for Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofurans emissions from Stationary Sources, EPA Publication SW-846 (incorporated by reference—see § 63.14). After June 3, 2029, EPA Method 0023A is no longer allowed; or

(B) EPA Method 23 of appendix A-7 to part 60 of this chapter.

(ii) You must sample for a minimum of three hours, and you must collect a minimum sample volume of 2.5 dscm;

(iii) You may assume that nondetects are present at zero concentration.

(2) *Mercury.* You must use EPA Method 29 of appendix A-8 to part 60 of this chapter to demonstrate compliance with emission standard for mercury.

(3) *Cadmium and lead.* You must use EPA Method 29 of appendix A-8 to part 60 of this chapter to determine compliance with the emission standard for cadmium and lead (combined).

(4) *Arsenic, beryllium, and chromium.* You must use EPA Method 29 of appendix A-8 to part 60 of this chapter to determine compliance with the emission standard for arsenic, beryllium, and chromium (combined).

(5) *Hydrogen chloride and chlorine gas—(i) Compliance with MACT standards.* To determine compliance with the emission standard for hydrogen chloride and chlorine gas (combined), you must use:

(A) EPA Method 26 or 26A of appendix A-8 to part 60 of this chapter; or

(B) EPA Method 320 or 321 of appendix A to this part for hydrogen chloride and the back-half, caustic impingers of EPA Method 26 or 26A of

appendix A–8 to part 60 of this chapter to measure chlorine gas.

(C) [Reserved]

(ii) *Compliance with risk-based limits under § 63.1215.* To demonstrate compliance with emission limits established under § 63.1215, you must use EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter, EPA Method 320 of appendix A to this part, or EPA Method 321 of appendix A to this part.

(A) For cement kilns and sources equipped with a dry acid gas scrubber, you must use EPA Method 320 or 321 of appendix A to this part to measure hydrogen chloride, and the back-half, caustic impingers of EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter to measure chlorine gas; and

(B) For incinerators, boilers, and lightweight aggregate kilns, you must use EPA Method 320 or 321 of appendix A to this part to measure hydrogen chloride, and EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter to measure total chlorine, and calculate chlorine gas by difference if:

- (1) The bromine/chlorine ratio in feedstreams is greater than 5 percent; or
- (2) The sulfur/chlorine ratio in feedstreams is greater than 50 percent.

(6) Hydrogen Fluoride. To determine compliance with the emission standard for hydrogen fluoride gas, you must use:

(A) EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter; or

(B) EPA Method 320 of appendix A to this part.

(7) Hydrogen Cyanide. To determine compliance with the emission standard for hydrogen cyanide gas, you must use:

(A) EPA Method 320 of appendix A to this part; or

(B) If there are entrained water droplet conduct the performance test according to the site-specific test plan submitted according to § 63.1207(e)(1)(i). Any performance test, from a site with enclosed water droplets, which measures HCN concentrations, must be submitted for the Administrator's approval prior to testing according to § 63.7(f).

(8) *Particulate matter.* You must use EPA Method 5 or 5I of appendix A–3 to part 60 of this chapter to demonstrate compliance with the emission standard for particulate matter.

(9) *DRE.* The test method selected by the facility for volatile and/or semivolatile organic compounds must be approved in the comprehensive performance test plan.

(10) *Feedstream analytical methods.* You may use any reliable analytical method to determine feedstream concentrations of metals, chlorine,

fluorine, and other constituents. It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.

(11) *Opacity.* If you determine compliance with the opacity standard under the monitoring requirements of § 63.1209(a)(1)(iv) and (v), you must use EPA Method 9 of appendix A–4 to part 60 of this chapter.

■ 7. Revise § 63.1209 to read as follows:

§ 63.1209 What are the monitoring requirements?

(a) *Continuous emissions monitoring systems (CEMS) and continuous opacity monitoring systems (COMS).* (1) (i) You must use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standard under this subpart. You must also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

(ii) (A) *Cement kilns under § 63.1204.* Except as provided by paragraphs (a)(1)(iv) and (v) of the section, you must use a COMS to demonstrate and monitor compliance with the opacity standard under § 63.1204(a)(7) and (b)(7) at each point where emissions are vented from these affected sources including the bypass stack of a preheater or preheater/precalciner kiln with dual stacks.

(B) *Cement kilns under § 63.1220.* Except as provided by paragraphs (a)(1)(iv) and (v) of the section and unless your source is equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9), you must use a COMS to demonstrate and monitor compliance with the opacity standard under § 63.1220(a)(7) and (b)(7) at each point where emissions are vented from these affected sources including the bypass stack of a preheater or preheater/precalciner kiln with dual stacks.

(C) You must maintain and operate each COMS in accordance with the requirements of § 63.8(c) except for the requirements under § 63.8(c)(3). The requirements of § 63.1211(c) shall be complied with instead of § 63.8(c)(3); and

(D) Compliance is based on a six-minute block average.

(iii) [Reserved].

(iv) If you operate a cement kiln subject to the provisions of this subpart and use a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks, you may, in lieu of installing the COMS required by paragraph (a)(1)(ii) of this section,

comply with the opacity standard in accordance with the procedures of EPA Method 9 of appendix A–4 to part 60 of this chapter:

(A) You must conduct the EPA Method 9 of appendix A–4 to part 60 of this chapter test while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day;

(B) The duration of the EPA Method 9 of appendix A–4 to part 60 of this chapter test shall be at least 30 minutes each day;

(C) You must use EPA Method 9 of appendix A–4 to part 60 of this chapter procedures to monitor and record the average opacity for each six-minute block period during the test; and

(D) To remain in compliance, all six-minute block averages must not exceed the opacity standard.

(v) If you operate a cement kiln subject to the provisions of this subpart and use a particulate matter control device that exhausts through a monovent, or if the use of a COMS in accordance with the installation specification of Performance Specification 1 (PS–1) of appendix B to part 60 of this chapter is not feasible, you may, in lieu of installing the COMS required by paragraph (a)(1)(ii) of this section, comply with the opacity standard in accordance with the procedures of EPA Method 9 of appendix A–4 to part 60 of this chapter:

(A) You must conduct the EPA Method 9 of appendix A–4 to part 60 of this chapter test while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day;

(B) The duration of the EPA Method 9 of appendix A–4 to part 60 of this chapter test shall be at least 30 minutes each day;

(C) You must use EPA Method 9 of appendix A–4 to part 60 of this chapter procedures to monitor and record the average opacity for each six-minute block period during the test; and

(D) To remain in compliance, all six-minute block averages must not exceed the opacity standard.

(2) *Performance specifications.* You must install, calibrate, maintain, and continuously operate the CEMS and COMS in compliance with the quality assurance procedures provided in the appendix to this subpart and Performance Specifications 1 (opacity), 4B (carbon monoxide and oxygen), and 8A (hydrocarbons) of appendix B to part 60 of this chapter.

(3) *Carbon monoxide readings exceeding the span.* (i) Except as provided by paragraph (a)(3)(ii) of this section, if a carbon monoxide CEMS

detects a response that results in a one-minute average at or above the 3,000 ppmv span level required by Performance Specification 4B of appendix B to part 60 of this chapter, the one-minute average must be recorded as 10,000 ppmv. The one-minute 10,000 ppmv value must be used for calculating the hourly rolling average carbon monoxide level.

(ii) Carbon monoxide CEMS that use a span value of 10,000 ppmv when one-minute carbon monoxide levels are equal to or exceed 3,000 ppmv are not subject to paragraph (a)(3)(i) of this section. Carbon monoxide CEMS that use a span value of 10,000 are subject to the same CEMS performance and equipment specifications when operating in the range of 3,000 ppmv to 10,000 ppmv that are provided by Performance Specification 4B of appendix B to part 60 of this chapter for other carbon monoxide CEMS, except:

(A) Calibration drift must be less than 300 ppmv; and

(B) Calibration error must be less than 500 ppmv.

(4) *Hydrocarbon readings exceeding the span.* (i) Except as provided by paragraph (a)(4)(ii) of this section, if a hydrocarbon CEMS detects a response that results in a one-minute average at or above the 100 ppmv span level required by Performance Specification 8A of appendix B to part 60 of this chapter, the one-minute average must be recorded as 500 ppmv. The one-minute 500 ppmv value must be used for calculating the hourly rolling average HC level.

(ii) Hydrocarbon CEMS that use a span value of 500 ppmv when one-minute hydrocarbon levels are equal to or exceed 100 ppmv are not subject to paragraph (a)(4)(i) of this section. Hydrocarbon CEMS that use a span value of 500 ppmv are subject to the same CEMS performance and equipment specifications when operating in the range of 100 ppmv to 500 ppmv that are provided by Performance Specification 8A of appendix B to part 60 of this chapter, for other hydrocarbon CEMS, except:

(A) The zero and high-level calibration gas must have a hydrocarbon level of between 0 and 100 ppmv, and between 250 and 450 ppmv, respectively;

(B) The strip chart recorder, computer, or digital recorder must be capable of recording all readings within the CEM measurement range and must have a resolution of 2.5 ppmv;

(C) The CEMS calibration must not differ by more than ± 15 ppmv after each 24-hour period of the seven day test at both zero and high levels;

(D) The calibration error must be no greater than 25 ppmv; and

(E) The zero level, mid-level, and high level calibration gas used to determine calibration error must have a hydrocarbon level of 0–200 ppmv, 150–200 ppmv, and 350–400 ppmv, respectively.

(5) *Petitions to use CEMS for other standards.* You may petition the Administrator to use CEMS for compliance monitoring for particulate matter, mercury, semivolatile metals, low volatile metals, and hydrogen chloride and chlorine gas under § 63.8(f) in lieu of compliance with the corresponding operating parameter limits under this section.

(6) *Calculation of rolling averages—(i) Calculation of rolling averages initially.* The carbon monoxide or hydrocarbon CEMS must begin recording one-minute average values by 12:01 a.m. and hourly rolling average values by 1:01 a.m., when 60 one-minute values will be available for calculating the initial hourly rolling average for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute and hourly rolling average values within 60 seconds and 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), respectively, from the time at which compliance begins.

(ii) *Calculation of rolling averages upon intermittent operations.* You must ignore periods of time when one-minute values are not available for calculating the hourly rolling average. When one-minute values become available again, the first one-minute value is added to the previous 59 values to calculate the hourly rolling average.

(iii) *Calculation of rolling averages when the hazardous waste feed is cutoff.*

(A) Except as provided by paragraph (a)(6)(iii)(B) of this section, you must continue monitoring carbon monoxide and hydrocarbons when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if the emission levels exceed the standard.

(B) You are not subject to the CEMS requirements of this subpart during periods of time you meet the requirements of § 63.1206(b)(1)(ii) (compliance with emissions standards for nonhazardous waste burning sources when you are not burning hazardous waste).

(7) *Operating parameter limits for hydrocarbons.* If you elect to comply with the carbon monoxide and hydrocarbon emission standard by

continuously monitoring carbon monoxide with a CEMS, you must demonstrate that hydrocarbon emissions during the comprehensive performance test do not exceed the hydrocarbon emissions standard. In addition, the limits you establish on the destruction and removal efficiency (DRE) operating parameters required under paragraph (j) of this section also ensure that you maintain compliance with the hydrocarbon emission standard. If you do not conduct the hydrocarbon demonstration and DRE tests concurrently, you must establish separate operating parameter limits under paragraph (j) of this section based on each test and the more restrictive of the operating parameter limits applies.

(b) *Other continuous monitoring systems (CMS).* (1) You must use CMS (e.g., thermocouples, pressure transducers, flow meters) to document compliance with the applicable operating parameter limits under this section.

(2) Except as specified in paragraphs (b)(2)(i) and (ii) of this section, you must install and operate continuous monitoring systems other than CEMS in conformance with § 63.8(c)(3) that requires you, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system:

(i) *Calibration of thermocouples and pyrometers.* The calibration of thermocouples must be verified at a frequency and in a manner consistent with manufacturer specifications, but no less frequent than once per year. You must operate and maintain optical pyrometers in accordance with manufacturer specifications unless otherwise approved by the Administrator. You must calibrate optical pyrometers in accordance with the frequency and procedures recommended by the manufacturer, but no less frequent than once per year, unless otherwise approved by the Administrator. And,

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If you operate a carbon injection system, the accuracy of the weight measurement device must be ± 1 percent of the weight being measured. The calibration of the device must be verified at least once each calendar quarter at a frequency of approximately 120 days.

(3) CMS must sample the regulated parameter without interruption, and evaluate the detector response at least once each 15 seconds, and compute and record the average values at least every 60 seconds.

(4) The span of the non-CEMS CMS detector must not be exceeded. You must interlock the span limits into the automatic waste feed cutoff system required by § 63.1206(c)(3).

(5) *Calculation of rolling averages—(i) Calculation of rolling averages initially.* Continuous monitoring systems must begin recording one-minute average values by 12:01 a.m., hourly rolling average values by 1:01 a.m. (e.g., when 60 one-minute values will be available for calculating the initial hourly rolling average), and twelve-hour rolling averages by 12:01 p.m. (e.g., when 720 one-minute averages are available to calculate a 12-hour rolling average), for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute, hourly rolling average, and 12-hour rolling average values within 60 seconds, 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), and 720 minutes (when 720 one-minute values will be available for calculating the initial 12-hour hourly rolling average) respectively, from the time at which compliance begins.

(ii) *Calculation of rolling averages upon intermittent operations.* You must ignore periods of time when one-minute values are not available for calculating rolling averages. When one-minute values become available again, the first one-minute value is added to the previous one-minute values to calculate rolling averages.

(iii) *Calculation of rolling averages when the hazardous waste feed is cutoff.* (A) Except as provided by paragraph (b)(5)(iii)(B) of this section, you must continue monitoring operating parameter limits with a CMS when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if an operating parameter exceeds its limit.

(B) You are not subject to the CMS requirements of this subpart during periods of time you meet the requirements of § 63.1206(b)(1)(ii) (compliance with emissions standards for nonhazardous waste burning sources when you are not burning hazardous waste).

(c) *Analysis of feedstreams—(1) General.* Prior to feeding the material, you must obtain an analysis of each feedstream that is sufficient to document compliance with the applicable feedrate limits provided by this section.

(2) *Feedstream analysis plan.* You must develop and implement a feedstream analysis plan and record it

in the operating record. The plan must specify at a minimum:

(i) The parameters for which you will analyze each feedstream to ensure compliance with the operating parameter limits of this section;

(ii) Whether you will obtain the analysis by performing sampling and analysis or by other methods, such as using analytical information obtained from others or using other published or documented data or information;

(iii) How you will use the analysis to document compliance with applicable feedrate limits (e.g., if you blend hazardous wastes and obtain analyses of the wastes prior to blending but not of the blended, as-fired, waste, the plan must describe how you will determine the pertinent parameters of the blended waste);

(iv) The test methods which you will use to obtain the analyses;

(v) The sampling method which you will use to obtain a representative sample of each feedstream to be analyzed using sampling methods described in appendix IX to part 266 of this chapter, or an equivalent method; and

(vi) The frequency with which you will review or repeat the initial analysis of the feedstream to ensure that the analysis is accurate and up to date.

(3) *Review and approval of analysis plan.* You must submit the feedstream analysis plan to the Administrator for review and approval, if requested.

(4) *Compliance with feedrate limits.* To comply with the applicable feedrate limits of this section, you must monitor and record feedrates as follows:

(i) Determine and record the value of the parameter for each feedstream by sampling and analysis or other method;

(ii) Determine and record the mass or volume flowrate of each feedstream by a CMS. If you determine flowrate of a feedstream by volume, you must determine and record the density of the feedstream by sampling and analysis (unless you report the constituent concentration in units of weight per unit volume (e.g., mg/l)); and

(iii) Calculate and record the mass feedrate of the parameter per unit time.

(5) *Waiver of monitoring of constituents in certain feedstreams.* You are not required to monitor levels of metals, chlorine, or fluorine in the following feedstreams to document compliance with the feedrate limits or work practice standards under this section provided that you document in the comprehensive performance test plan the expected levels of the constituent in the feedstream and account for those assumed feedrate levels in documenting compliance with

feedrate limits or work practice standards: natural gas, process air, and feedstreams from vapor recovery systems.

(d) *Performance evaluations.* (1) The requirements of § 63.8(d) (Quality control program) and (e) (Performance evaluation of continuous monitoring systems) apply, except that you must conduct performance evaluations of components of the CMS under the frequency and procedures (for example, submittal of performance evaluation test plan for review and approval) applicable to performance tests as provided by § 63.1207.

(2) You must comply with the quality assurance procedures for CEMS prescribed in appendix A to this subpart.

(e) *Conduct of monitoring.* The provisions of § 63.8(b) apply.

(f) *Operation and maintenance of continuous monitoring systems.* The provisions of § 63.8(c) apply except:

(1) *Section 63.8(c)(3).* The requirements of § 63.1211(c), that require CMS to be installed, calibrated, and operational on the compliance date, shall be complied with instead of § 63.8(c)(3);

(2) *Section 63.8(c)(4)(ii).* The performance specifications for carbon monoxide, hydrocarbon, and oxygen CEMS in appendix B to part 60 of this chapter that require detectors to measure the sample concentration at least once every 15 seconds for calculating an average emission rate once every 60 seconds shall be complied with instead of § 63.8(c)(4)(ii); and

(3) *Section 63.8(c)(4)(i), (c)(5), and (c)(7)(i)(C)* pertaining to COMS apply only to owners and operators of hazardous waste burning cement kilns.

(g) *Alternative monitoring requirements other than continuous emissions monitoring systems (CEMS)—*

(1) *Requests to use alternatives to operating parameter monitoring requirements.* (i) You may submit an application to the Administrator under this paragraph for approval of alternative operating parameter monitoring requirements to document compliance with the emission standards of this subpart. For requests to use additional CEMS, however, you must use paragraph (a)(5) of this section and § 63.8(f). Alternative requests to operating parameter monitoring requirements that include unproven monitoring methods may not be made under this paragraph and must be made under § 63.8(f).

(ii) You may submit an application to waive an operating parameter limit specified in this section based on

documentation that neither that operating parameter limit nor an alternative operating parameter limit is needed to ensure compliance with the emission standards of this subpart.

(iii) You must comply with the following procedures for applications submitted under paragraphs (g)(1)(i) and (ii) of this section:

(A) *Timing of the application.* You must submit the application to the Administrator not later than with the comprehensive performance test plan.

(B) *Content of the application.* You must include in the application:

(1) Data or information justifying your request for an alternative monitoring requirement (or for a waiver of an operating parameter limit), such as the technical or economic infeasibility or the impracticality of using the required approach;

(2) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach/technique (e.g., type of detector, monitoring location), the averaging period for the limit, and how the limit is to be calculated; and

(3) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard, or that it is the monitoring requirement that best assures compliance with the standard and that is technically and economically practicable.

(C) *Approval of request to use an alternative monitoring requirement or waive an operating parameter limit.* The Administrator will notify you of approval or intention to deny approval of the request within 90 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplementary information that you submit. The Administrator will not approve an alternative monitoring request unless the alternative monitoring requirement provides equivalent or better assurance of compliance with the relevant emission standard, or is the monitoring requirement that best assures compliance with the standard and that is technically and economically practicable. Before disapproving any request, the Administrator will notify you of the Administrator's intention to disapprove the request together with:

(1) Notice of the information and findings on which the intended disapproval is based; and

(2) Notice of opportunity for you to present additional information to the Administrator before final action on the request. At the time the Administrator

notifies you of intention to disapprove the request, the Administrator will specify how much time you will have after being notified of the intended disapproval to submit the additional information.

(D) *Responsibility of owners and operators.* You are responsible for ensuring that you submit any supplementary and additional information supporting your application in a timely manner to enable the Administrator to consider your application during review of the comprehensive performance test plan. Neither your submittal of an application, nor the Administrator's failure to approve or disapprove the application, relieves you of the responsibility to comply with the provisions of this subpart.

(iv) *Dual standards that incorporate the interim standards for HAP metals—*

(A) *Semivolatile and low volatile metals.* You may petition the Administrator to waive a feedrate operating parameter limit under paragraph (n)(2) of this section for either the emission standards expressed in a thermal emissions format or the interim standards based on documentation that the feedrate operating parameter limit is not needed to ensure compliance with the relevant standard on a continuous basis.

(B) *Mercury.* You may petition the Administrator to waive a feedrate operating parameter limit under paragraph (l)(1) of this section for either the feed concentration standard under § 63.1220(a)(2)(i) and (b)(2)(i) or the interim standards based on documentation that the feedrate operating parameter limit is not needed to ensure compliance with the relevant standard on a continuous basis.

(2) *Administrator's discretion to specify additional or alternative requirements.* The Administrator may determine on a case-by-case basis at any time (e.g., during review of the comprehensive performance test plan, during compliance certification review) that you may need to limit additional or alternative operating parameters (e.g., opacity in addition to or in lieu of operating parameter limits on the particulate matter control device) or that alternative approaches to establish limits on operating parameters may be necessary to document compliance with the emission standards of this subpart.

(h) *Reduction of monitoring data.* The provisions of § 63.8(g) apply.

(i) *When an operating parameter is applicable to multiple standards.* Paragraphs (j) through (p) of this section require you to establish limits on operating parameters based on comprehensive performance testing to

ensure you maintain compliance with the emission standards of this subpart. For several parameters, you must establish a limit for the parameter to ensure compliance with more than one emission standard. An example is a limit on minimum combustion chamber temperature to ensure compliance with both the DRE standard of paragraph (j) of this section and the dioxin/furan standard of paragraph (k) of this section. If the performance tests for such standards are not performed simultaneously, the most stringent limit for a parameter derived from independent performance tests applies.

(j) *DRE.* To remain in compliance with the destruction and removal efficiency (DRE) standard, you must establish operating limits during the comprehensive performance test (or during a previous DRE test under provisions of § 63.1206(b)(7)) for the following parameters, unless the limits are based on manufacturer specifications. You must comply with those limits at all times that hazardous waste remains in the combustion chamber (i.e., the hazardous waste residence time has not transpired since the hazardous waste feed cutoff system was activated). When hazardous waste does not remain in the combustion chamber, you are not required to comply with the operating limits pursuant to paragraph (j) of this section:

(1) *Minimum combustion chamber temperature.* (i) You must measure the temperature of each combustion chamber at a location that best represents, as practicable, the bulk gas temperature in the combustion zone. You must document the temperature measurement location in the test plan you submit under § 63.1207(e);

(ii) You must establish a minimum hourly rolling average limit as the average of the test run averages;

(2) *Maximum flue gas flowrate or production rate.* (i) As an indicator of gas residence time in the control device, you must establish and comply with a limit on the maximum flue gas flowrate, the maximum production rate, or another parameter that you document in the site-specific test plan as an appropriate surrogate for gas residence time, as the average of the maximum hourly rolling averages for each run.

(ii) You must comply with this limit on a hourly rolling average basis;

(3) *Maximum hazardous waste feedrate.* (i) You must establish limits on the maximum pumpable and total (i.e., pumpable and nonpumpable) hazardous waste feedrate for each location where hazardous waste is fed.

(ii) You must establish the limits as the average of the maximum hourly rolling averages for each run.

(iii) You must comply with the feedrate limit(s) on a hourly rolling average basis;

(4) *Operation of waste firing system.* You must specify operating parameters and limits to ensure that good operation of each hazardous waste firing system is maintained.

(k) *Dioxins and furans.* You must comply with the dioxin and furans emission standard by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(1) *Gas temperature at the inlet to a dry particulate matter control device.* (i) For sources other than a lightweight aggregate kiln, if the combustor is equipped with an electrostatic precipitator, baghouse (fabric filter), or other dry emissions control device where particulate matter is suspended in contact with combustion gas, you must establish a limit on the maximum temperature of the gas at the inlet to the device on an hourly rolling average. You must establish the hourly rolling average limit as the average of the test run averages.

(ii) For hazardous waste burning lightweight aggregate kilns, you must establish a limit on the maximum temperature of the gas at the exit of the (last) combustion chamber (or exit of any waste heat recovery system) on an hourly rolling average. The limit must be established as the average of the test run averages;

(2) *Minimum combustion chamber temperature.* (i) For sources other than cement kilns, you must measure the temperature of each combustion chamber at a location that best represents, as practicable, the bulk gas temperature in the combustion zone. You must document the temperature measurement location in the test plan you submit under § 63.1207(e) and (f);

(ii) You must establish a minimum hourly rolling average limit as the average of the test run averages.

(3) *Maximum flue gas flowrate or production rate.* (i) As an indicator of gas residence time in the control device, you must establish and comply with a limit on the maximum flue gas flowrate, the maximum production rate, or another parameter that you document in the site-specific test plan as an appropriate surrogate for gas residence time, as the average of the maximum hourly rolling averages for each run.

(ii) You must comply with this limit on a hourly rolling average basis;

(4) *Maximum hazardous waste feedrate.* (i) You must establish limits on the maximum pumpable and total (pumpable and nonpumpable) hazardous waste feedrate for each location where waste is fed.

(ii) You must establish the limits as the average of the maximum hourly rolling averages for each run.

(iii) You must comply with the feedrate limit(s) on a hourly rolling average basis;

(5) *Particulate matter operating limit.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section;

(6) *Activated carbon injection parameter limits.* If your combustor is equipped with an activated carbon injection system:

(i) *Carbon feedrate.* You must establish a limit on minimum carbon injection rate on an hourly rolling average calculated as the average of the test run averages. If your carbon injection system injects carbon at more than one location, you must establish a carbon feedrate limit for each location.

(ii) *Carrier fluid.* You must establish a limit on minimum carrier fluid (gas or liquid) flowrate or pressure drop as an hourly rolling average based on the manufacturer's specifications. You must document the specifications in the test plan you submit under § 63.1207(e) and (f);

(iii) *Carbon specification.* (A) You must specify and use the brand (*i.e.*, manufacturer) and type of carbon used during the comprehensive performance test until a subsequent comprehensive performance test is conducted, unless you document in the site-specific performance test plan required under § 63.1207(e) and (f) key parameters that affect adsorption and establish limits on those parameters based on the carbon used in the performance test.

(B) You may substitute at any time a different brand or type of carbon provided that the replacement has equivalent or improved properties compared to the carbon used in the performance test and conforms to the key sorbent parameters you identify under paragraph (k)(6)(iii)(A) of this section. You must include in the operating record documentation that the substitute carbon will provide the same level of control as the original carbon.

(7) *Carbon bed parameter limits.* If your combustor is equipped with a carbon bed system:

(i) *Monitoring bed life.* You must:

(A) Monitor performance of the carbon bed consistent with manufacturer's specifications and recommendations to ensure the carbon bed (or bed segment for sources with multiple segments) has not reached the end of its useful life to minimize dioxin/furan and mercury emissions at least to the levels required by the emission standards;

(B) Document the monitoring procedures in the operation and maintenance plan;

(C) Record results of the performance monitoring in the operating record; and

(D) Replace the bed or bed segment before it has reached the end of its useful life to minimize dioxin/furan and mercury emissions at least to the levels required by the emission standards.

(ii) *Carbon specification.* (A) You must specify and use the brand (*i.e.*, manufacturer) and type of carbon used during the comprehensive performance test until a subsequent comprehensive performance test is conducted, unless you document in the site-specific performance test plan required under § 63.1207(e) and (f) key parameters that affect adsorption and establish limits on those parameters based on the carbon used in the performance test.

(B) You may substitute at any time a different brand or type of carbon provided that the replacement has equivalent or improved properties compared to the carbon used in the performance test. You must include in the operating record documentation that the substitute carbon will provide an equivalent or improved level of control as the original carbon.

(iii) *Maximum temperature.* You must measure the temperature of the carbon bed at either the bed inlet or exit and you must establish a maximum temperature limit on an hourly rolling average as the average of the test run averages.

(8) *Catalytic oxidizer parameter limits.* If your combustor is equipped with a catalytic oxidizer, you must establish limits on the following parameters:

(i) *Minimum flue gas temperature at the entrance of the catalyst.* You must establish a limit on minimum flue gas temperature at the entrance of the catalyst on an hourly rolling average as the average of the test run averages.

(ii) *Maximum time in-use.* You must replace a catalytic oxidizer with a new catalytic oxidizer when it has reached the maximum service time specified by the manufacturer.

(iii) *Catalyst replacement specifications.* When you replace a catalyst with a new one, the new catalyst must be equivalent to or better

than the one used during the previous comprehensive test, as measured by:

(A) Catalytic metal loading for each metal;

(B) Space time, expressed in the units s^{-1} , the maximum rated volumetric flow of combustion gas through the catalyst divided by the volume of the catalyst; and

(C) Substrate construction, including materials of construction, washcoat type, and pore density.

(iv) *Maximum flue gas temperature.* You must establish a maximum flue gas temperature limit at the entrance of the catalyst as an hourly rolling average, based on manufacturer's specifications.

(9) *Inhibitor feedrate parameter limits.* If you feed a dioxin/furan inhibitor into the combustion system, you must establish limits for the following parameters:

(i) *Minimum inhibitor feedrate.* You must establish a limit on minimum inhibitor feedrate on an hourly rolling average as the average of the test run averages.

(ii) *Inhibitor specifications.* (A) You must specify and use the brand (*i.e.*, manufacturer) and type of inhibitor used during the comprehensive performance test until a subsequent comprehensive performance test is conducted, unless you document in the site-specific performance test plan required under § 63.1207(e) and (f) key parameters that affect the effectiveness of the inhibitor and establish limits on those parameters based on the inhibitor used in the performance test.

(B) You may substitute at any time a different brand or type of inhibitor provided that the replacement has equivalent or improved properties compared to the inhibitor used in the performance test and conforms to the key parameters you identify under paragraph (k)(9)(ii)(A) of this section. You must include in the operating record documentation that the substitute inhibitor will provide the same level of control as the original inhibitor.

(l) *Mercury.* You must comply with the mercury emission standard by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(1) *Feedrate of mercury.* (i) For incinerators and solid fuel boilers, when complying with the mercury emission standards under §§ 63.1203, 63.1216 and 63.1219, you must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages.

(ii) For liquid fuel boilers, when complying with the mercury emission standards of § 63.1217, you must establish a rolling average limit for the mercury feedrate as follows on an averaging period not to exceed an annual rolling average:

(A) You must calculate a mercury system removal efficiency for each test run and calculate the average system removal efficiency of the test run averages. If emissions exceed the mercury emission standard during the comprehensive performance test, it is not a violation because the averaging period for the mercury emission standard is (not-to-exceed) one year and compliance is based on compliance with the mercury feedrate limit with an averaging period not-to-exceed one year.

(B) If you burn hazardous waste with a heating value of 10,000 Btu/lb or greater, you must calculate the mercury feedrate limit as follows:

(1) The mercury feedrate limit is the emission standard divided by $[1 - \text{system removal efficiency}]$.

(2) The mercury feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of mercury in hazardous waste feedstreams per million Btu of hazardous waste fired.

(3) You must comply with the hazardous waste mercury thermal concentration limit by determining the feedrate of mercury in all hazardous waste feedstreams (lb/hr) at least once a minute and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as $[\text{hazardous waste mercury feedrate (lb/hr)} / \text{hazardous waste thermal feedrate (MM Btu/hr)}]$.

(4) You must calculate a rolling average hazardous waste mercury thermal concentration that is updated each hour.

(5) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

(C) If you burn hazardous waste with a heating value of less than 10,000 Btu/

lb, you must calculate the mercury feedrate limit as follows:

(1) You must calculate the mercury feedrate limit as the mercury emission standard divided by $[1 - \text{System Removal Efficiency}]$.

(2) The feedrate limit is expressed as a mass concentration per unit volume of stack gas ($\mu\text{g}/\text{dscm}$) and is converted to a mass feedrate (lb/hr) by multiplying it by the average stack gas flowrate of the test run averages.

(3) You must comply with the feedrate limit by determining the mercury feedrate (lb/hr) at least once a minute to calculate a 60-minute average feedrate.

(4) You must update the rolling average feedrate each hour with this 60-minute feedrate measurement.

(5) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

(D) If your boiler is equipped with a wet scrubber, you must comply with the following unless you document in the performance test plan that you do not feed chlorine at rates that may substantially affect the system removal efficiency of mercury for purposes of establishing a mercury feedrate limit based on the system removal efficiency during the test:

(1) Scrubber blowdown must be minimized during a pretest conditioning period and during the performance test:

(2) Scrubber water must be preconditioned so that mercury in the water is at equilibrium with stack gas at the mercury feedrate level of the performance test; and

(3) You must establish an operating limit on minimum pH of scrubber water as the average of the test run averages and comply with the limit on an hourly rolling average.

(iii) For cement kilns:

(A) When complying with the emission standards under § 63.1220(a)(2)(i) and (b)(2)(i), you must:

(1) Comply with the mercury hazardous waste feed concentration operating requirement on a twelve-hour rolling average;

(2) Monitor and record in the operating record the as-fired mercury concentration in the hazardous waste (or the weighted-average mercury concentration for multiple hazardous waste feedstreams);

(3) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when the as-fired mercury concentration operating requirement is exceeded;

(B) When complying with the emission standards under §§ 63.1204 and 63.1220(a)(2)(ii)(A) and (b)(2)(ii)(A), you must establish a 12-hour rolling average limit for the feedrate of mercury in all feedstreams as the average of the test run averages;

(C) Except as provided by paragraph (l)(1)(iii)(D) of this section, when complying with the hazardous waste maximum theoretical emission concentration (MTEC) under § 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B), you must:

(1) Comply with the MTEC operating requirement on a twelve-hour rolling average;

(2) Monitor and record the feedrate of mercury for each hazardous waste feedstream according to § 63.1209(c);

(3) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(4) Continuously calculate and record in the operating record a MTEC assuming mercury from all hazardous waste feedstreams is emitted;

(5) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when the MTEC operating requirement is exceeded;

(D) In lieu of complying with paragraph (l)(1)(iii)(C) of this section, you may:

(1) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iii)(C)(4) of this section is below the operating requirement under paragraphs § 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B); and

(2) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iii)(D)(1) of this section.

(iv) For lightweight aggregate kilns:

(A) When complying with the emission standards under §§ 63.1205,

63.1221(a)(2)(i) and (b)(2)(i), you must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages;

(B) Except as provided by paragraph (l)(1)(iv)(C) of this section, when complying with the hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) under § 63.1221(a)(2)(ii) and (b)(2)(ii), you must:

(1) Comply with the MTEC operating requirement on a twelve-hour rolling average;

(2) Monitor and record the feedrate of mercury for each hazardous waste feedstream according to § 63.1209(c);

(3) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(4) Continuously calculate and record in the operating record a MTEC assuming mercury from all hazardous waste feedstreams is emitted;

(5) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when the MTEC operating requirement is exceeded;

(C) In lieu of complying with paragraph (l)(1)(iv)(B) of this section, you may:

(1) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iv)(B)(4) of this section is below the operating requirement under paragraphs § 63.1221(a)(2)(ii) and (b)(2)(ii); and

(2) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iv)(C)(1) of this section.

(v) *Extrapolation of feedrate levels.* In lieu of establishing mercury feedrate limits as specified in paragraphs (l)(1)(i) through (iv) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and 63.1207(e) and (f) to use the mercury feedrates and associated emission rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. The extrapolation methodology will be reviewed and approved, as warranted, by the Administrator. The review will consider in particular whether:

(A) Performance test metal feedrates are appropriate (*i.e.*, whether feedrates are at least at normal levels; depending

on the heterogeneity of the waste, whether some level of spiking would be appropriate; and whether the physical form and species of spiked material is appropriate); and

(B) Whether the extrapolated feedrates you request are warranted considering historical metal feedrate data.

(2) *Wet scrubber.* If your combustor is equipped with a wet scrubber, you must establish operating parameter limits prescribed by paragraph (o)(3) of this section, except for paragraph (o)(3)(iv).

(3) *Activated carbon injection.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraphs (k)(5) and (6) of this section.

(4) *Activated carbon bed.* If your combustor is equipped with an activated carbon bed system, you must comply with the requirements of paragraph (k)(7) of this section to assure compliance with the mercury emission standard.

(m) *Particulate matter.* You must comply with the particulate matter emission standard by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(1) *Control device operating parameter limits (OPLs)*—(i) *Wet scrubbers.* For sources equipped with wet scrubbers, including ionizing wet scrubbers, high energy wet scrubbers such as venturi, hydrosonic, collision, or free jet wet scrubbers, and low energy wet scrubbers such as spray towers, packed beds, or tray towers, you must establish limits on the following parameters:

(A) For high energy scrubbers only, minimum pressure drop across the wet scrubber on an hourly rolling average, established as the average of the test run averages;

(B) For all wet scrubbers:

(1) To ensure that the solids content of the scrubber liquid does not exceed levels during the performance test, you must either:

(i) Establish a limit on solids content of the scrubber liquid using a CMS or by manual sampling and analysis. If you elect to monitor solids content manually, you must sample and analyze the scrubber liquid hourly unless you support an alternative monitoring frequency in the performance test plan that you submit for review and approval; or

(ii) Establish a minimum blowdown rate using a CMS and either a minimum

scrubber tank volume or liquid level using a CMS.

(2) For maximum solids content monitored with a CMS, you must establish a limit on a twelve-hour rolling average as the average of the test run averages.

(3) For maximum solids content measured manually, you must establish an hourly limit, as measured at least once per hour, unless you support an alternative monitoring frequency in the performance test plan that you submit for review and approval. You must establish the maximum hourly limit as the average of the manual measurement averages for each run.

(4) For minimum blowdown rate and either a minimum scrubber tank volume or liquid level using a CMS, you must establish a limit on an hourly rolling average as the average of the test run averages.

(C) For high energy wet scrubbers only, you must establish limits on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average. If you establish limits on maximum flue gas flowrate under this paragraph, you need not establish a limit on maximum flue gas flowrate under paragraph (m)(2) of this section. You must establish these hourly rolling average limits as the average of the test run averages; and

(ii)–(iii) [Reserved].

(iv) *Other particulate matter control devices.* For each particulate matter control device that is not a fabric filter or high energy wet scrubber, or is not an electrostatic precipitator or ionizing wet scrubber for which you elect to monitor particulate matter loadings under § 63.1206(c)(9) for process control, you must ensure that the control device is properly operated and maintained as required by § 63.1206(c)(7) and by monitoring the operation of the control device as follows:

(A) During each comprehensive performance test conducted to demonstrate compliance with the particulate matter emissions standard, you must establish a range of operating values for the control device that is a representative and reliable indicator that the control device is operating within the same range of conditions as during the performance test. You must establish this range of operating values as follows:

(1) You must select a set of operating parameters appropriate for the control device design that you determine to be a representative and reliable indicator of the control device performance.

(2) You must measure and record values for each of the selected operating

parameters during each test run of the performance test. A value for each selected parameter must be recorded using a continuous monitor.

(3) For each selected operating parameter measured in accordance with the requirements of paragraph (m)(1)(iv)(A)(1) of this section, you must establish a minimum operating parameter limit or a maximum operating parameter limit, as appropriate for the parameter, to define the operating limits within which the control device can operate and still continuously achieve the same operating conditions as during the performance test.

(4) You must prepare written documentation to support the operating parameter limits established for the control device and you must include this documentation in the performance test plan that you submit for review and approval. This documentation must include a description for each selected parameter and the operating range and monitoring frequency required to ensure the control device is being properly operated and maintained.

(B) You must install, calibrate, operate, and maintain a monitoring device equipped with a recorder to measure the values for each operating parameter selected in accordance with the requirements of paragraph (m)(1)(iv)(A)(1) of this section. You must install, calibrate, and maintain the monitoring equipment in accordance with the equipment manufacturer's specifications. The recorder must record the detector responses at least every 60 seconds, as required in the definition of continuous monitor.

(C) You must regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the control device is operating properly. An excursion is determined to have occurred any time that the actual value of a selected operating parameter is less than the minimum operating limit (or, if applicable, greater than the maximum operating limit) established for the parameter in accordance with the requirements of paragraph (m)(1)(iv)(A)(3) of this section.

(D) Operating parameters selected in accordance with paragraph (m)(1)(iv) of this section may be based on manufacturer specifications provided you support the use of manufacturer specifications in the performance test plan that you submit for review and approval.

(2) *Maximum flue gas flowrate or production rate.* (i) As an indicator of gas residence time in the control device, you must establish a limit on the maximum flue gas flowrate, the

maximum production rate, or another parameter that you document in the site-specific test plan as an appropriate surrogate for gas residence time, as the average of the maximum hourly rolling averages for each run.

(ii) You must comply with this limit on a hourly rolling average basis;

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators, solid fuel boilers, and liquid fuel boilers must establish a maximum ash feedrate limit as a 12-hour rolling average based on the average of the test run averages. This requirement is waived, however, if you comply with the particulate matter detection system requirements under § 63.1206(c)(9).

(n) *Semivolatile metals and low volatility metals.* You must comply with the semivolatile metal (cadmium and lead) and low volatile metal (arsenic, beryllium, and chromium) emission standards by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(1) *Maximum inlet temperature to dry particulate matter air pollution control device.* You must establish a limit on the maximum inlet temperature to the primary dry metals emissions control device (e.g., electrostatic precipitator, baghouse) on an hourly rolling average basis as the average of the test run averages.

(2) *Maximum feedrate of semivolatile and low volatile metals—(i) General.* You must establish feedrate limits for semivolatile metals (cadmium and lead) and low volatile metals (arsenic, beryllium, and chromium) as follows, except as provided by paragraph (n)(2)(vii) of this section.

(ii) For incinerators, cement kilns, and lightweight aggregate kilns, when complying with the emission standards under §§ 63.1203 through 63.1205 and 63.1219, and for solid fuel boilers when complying with the emission standards under § 63.1216, you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(iii) *Cement kilns under § 63.1220.* (A) When complying with the emission standards under § 63.1220(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams. You must calculate

hazardous waste thermal concentrations for semivolatile metals and low volatile metals for each run as the total mass feedrate of semivolatile metals or low volatile metals for all hazardous waste feedstreams divided by the total heat input rate for all hazardous waste feedstreams. The 12-hour rolling average feedrate limits for semivolatile metals and low volatile metals are the average of the test run averages, calculated on a thermal concentration basis, for all hazardous waste feeds.

(B) When complying with the emission standards under § 63.1220(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(iv) *Lightweight aggregate kilns under* § 63.1221. (A) When complying with the emission standards under § 63.1221(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams as specified in paragraphs (n)(2)(iii)(A) of this section.

(B) When complying with the emission standards under § 63.1221(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(v) *Liquid fuel boilers under* § 63.1217—(A) *Semivolatile metals.* You must establish a rolling average limit for the semivolatile metal feedrate as follows on an averaging period not to exceed an annual rolling average.

(1) *System removal efficiency.* You must calculate a semivolatile metal system removal efficiency for each test run and calculate the average system removal efficiency of the test run averages. If emissions exceed the semivolatile metal emission standard during the comprehensive performance test, it is not a violation because the averaging period for the semivolatile metal emission standard is one year and compliance is based on compliance with the semivolatile metal feedrate limit that has an averaging period not to exceed an annual rolling average.

(2) *Boilers that feed hazardous waste with a heating value of 10,000 Btu/lb or greater.* You must calculate the semivolatile metal feedrate limit as the semivolatile metal emission standard divided by [1 – System Removal Efficiency].

(i) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of semivolatile metals in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(ii) You must comply with the hazardous waste semivolatile metal thermal concentration limit by determining the feedrate of semivolatile metal in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as [hazardous waste semivolatile metal feedrate (lb/hr)/hazardous waste thermal feedrate (MM Btu/hr)].

(iii) You must calculate a rolling average hazardous waste semivolatile metal thermal concentration that is updated each hour.

(iv) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

(3) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* (j) You must calculate the semivolatile metal feedrate limit as the semivolatile metal emission standard divided by [1 – System Removal Efficiency].

(ii) The feedrate limit is expressed as a mass concentration per unit volume of stack gas (µg/dscm) and is converted to a mass feedrate (lb/hr) by multiplying it by the average stack gas flowrate (dscm/hr) of the test run averages.

(iii) You must comply with the feedrate limit by determining the semivolatile metal feedrate (lb/hr) at least once a minute to calculate a 60-minute average feedrate.

(iv) You must update the rolling average feedrate each hour with this 60-minute feedrate measurement.

(v) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section.

Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

(B) *Chromium—(1) Boilers that feed hazardous waste with a heating value of 10,000 Btu/lb or greater.* (i) The 12-hour rolling average feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chromium in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler. You must establish the 12-hour rolling average feedrate limit as the average of the test run averages.

(ii) You must comply with the hazardous waste chromium thermal concentration limit by determining the feedrate of chromium in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MMBtu/hr) at least once each minute as [hazardous waste chromium feedrate (lb/hr)/hazardous waste thermal feedrate (MMBtu/hr)].

(2) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* You must establish a 12-hour rolling average limit for the total feedrate (lb/hr) of chromium in all feedstreams as the average of the test run averages.

(vi) *LVM limits for pumpable wastes.* You must establish separate feedrate limits for low volatile metals in pumpable feedstreams using the procedures prescribed above for total low volatile metals. Dual feedrate limits for both pumpable and total feedstreams are not required, however, if you base the total feedrate limit solely on the feedrate of pumpable feedstreams.

(vii) *Extrapolation of feedrate levels.* In lieu of establishing feedrate limits as specified in paragraphs (n)(2)(ii) through (vi) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and 63.1207(e) and (f) to use the semivolatile metal and low volatile metal feedrates and associated emission rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. The extrapolation methodology will be reviewed and approved, as warranted, by the Administrator. The review will consider in particular whether:

(A) Performance test metal feedrates are appropriate (*i.e.*, whether feedrates are at least at normal levels; depending on the heterogeneity of the waste,

whether some level of spiking would be appropriate; and whether the physical form and species of spiked material is appropriate); and

(B) Whether the extrapolated feedrates you request are warranted considering historical metal feedrate data.

(3) *Control device operating parameter limits (OPLs).* You must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section;

(4) Maximum total chlorine and chloride feedrate. You must establish a 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams as the average of the test run averages.

(5) *Maximum flue gas flowrate or production rate.* (i) As an indicator of gas residence time in the control device, you must establish a limit on the maximum flue gas flowrate, the maximum production rate, or another parameter that you document in the site-specific test plan as an appropriate surrogate for gas residence time, as the average of the maximum hourly rolling averages for each run.

(ii) You must comply with this limit on a hourly rolling average basis.

(o) *Hydrogen chloride and chlorine gas.* You must comply with the hydrogen chloride and chlorine gas emission standard by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(1) *Feedrate of total chlorine and chloride.*—(i) *Incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, and hydrochloric acid production furnaces.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

(ii) *Liquid fuel boilers.*—(A) *Boilers that feed hazardous waste with a heating value not less than 10,000 Btu/lb.* (1) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chlorine (organic and inorganic) in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(2) You must establish a 12-hour rolling average feedrate limit as the average of the test run averages.

(3) You must comply with the feedrate limit by determining the mass feedrate of hazardous waste feedstreams (lb/hr) at least once a minute and by knowing the chlorine content (organic and inorganic, lb of chlorine/lb of

hazardous waste) and heating value (Btu/lb) of hazardous waste feedstreams at all times to calculate a 1-minute average feedrate measurement as [hazardous waste chlorine content (lb of chlorine/lb of hazardous waste feed)/hazardous waste heating value (Btu/lb of hazardous waste)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

(B) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages. You must update the rolling average feedrate each hour with a 60-minute average feedrate measurement.

(2) *Maximum flue gas flowrate or production rate.* (i) As an indicator of gas residence time in the control device, you must establish a limit on the maximum flue gas flowrate, the maximum production rate, or another parameter that you document in the site-specific test plan as an appropriate surrogate for gas residence time, as the average of the maximum hourly rolling averages for each run.

(ii) You must comply with this limit on a hourly rolling average basis;

(3) *Wet scrubber.* If your combustor is equipped with a wet scrubber:

(i) If your source is equipped with a high energy wet scrubber such as a venturi, hydrosonic, collision, or free jet wet scrubber, you must establish a limit on minimum pressure drop across the wet scrubber on an hourly rolling average as the average of the test run averages;

(ii) If your source is equipped with a low energy wet scrubber such as a spray tower, packed bed, or tray tower, you must establish a minimum pressure drop across the wet scrubber based on manufacturer's specifications. You must comply with the limit on an hourly rolling average;

(iii) If your source is equipped with a low energy wet scrubber, you must establish a limit on minimum liquid feed pressure to the wet scrubber based on manufacturer's specifications. You must comply with the limit on an hourly rolling average;

(iv) You must establish a limit on minimum pH on an hourly rolling average as the average of the test run averages;

(v) You must establish limits on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average as the average of the test run averages. If you establish limits on

maximum flue gas flowrate under this paragraph, you need not establish a limit on maximum flue gas flowrate under paragraph (o)(2) of this section; and

(4) *Dry scrubber.* If your combustor is equipped with a dry scrubber, you must establish the following operating parameter limits:

(i) *Minimum sorbent feedrate.* You must establish a limit on minimum sorbent feedrate on an hourly rolling average as the average of the test run averages.

(ii) *Minimum carrier fluid flowrate or nozzle pressure drop.* You must establish a limit on minimum carrier fluid (gas or liquid) flowrate or nozzle pressure drop based on manufacturer's specifications.

(iii) *Sorbent specifications.* (A) You must specify and use the brand (*i.e.*, manufacturer) and type of sorbent used during the comprehensive performance test until a subsequent comprehensive performance test is conducted, unless you document in the site-specific performance test plan required under § 63.1207(e) and (f) key parameters that affect adsorption and establish limits on those parameters based on the sorbent used in the performance test.

(B) You may substitute at any time a different brand or type of sorbent provided that the replacement has equivalent or improved properties compared to the sorbent used in the performance test and conforms to the key sorbent parameters you identify under paragraph (o)(4)(iii)(A) of this section. You must record in the operating record documentation that the substitute sorbent will provide the same level of control as the original sorbent.

(p) *Maximum combustion chamber pressure.* If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion systems leaks from hazardous waste combustion, you must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not adequately maintained.

(q) *Operating under different modes of operation.* If you operate under different modes of operation, you must establish operating parameter limits for each mode. You must document in the operating record when you change a mode of operation and begin complying with the operating limits for an alternative mode of operation.

(1) *Operating under otherwise applicable standards after the hazardous waste residence time has*

transpired. As provided by § 63.1206(b)(1)(ii), you may operate under otherwise applicable requirements promulgated under Clean Air Act sections 112 and 129 in lieu of the substantive requirements of this subpart.

(i) The otherwise applicable requirements promulgated under Clean Air Act sections 112 and 129 are applicable requirements under this subpart.

(ii) You must specify (*e.g.*, by reference) the otherwise applicable requirements as a mode of operation in your Documentation of Compliance under § 63.1211(c), your Notification of Compliance under § 63.1207(j), and your title V or other air permit application. These requirements include the otherwise applicable requirements governing emission standards, monitoring and compliance, and notification, reporting, and recordkeeping.

(2) *Calculating rolling averages under different modes of operation.* When you transition to a different mode of operation, you must calculate rolling averages as follows:

(i) *Retrieval approach.* Calculate rolling averages anew using the continuous monitoring system values previously recorded for that mode of operation (*i.e.*, you ignore continuous monitoring system values subsequently recorded under other modes of operation when you transition back to a mode of operation); or

(ii) *Start anew.* Calculate rolling averages anew without considering previous recordings.

(A) Rolling averages must be calculated as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate hourly or 12-hour rolling averages, whichever is applicable to the parameter.

(B) You may not transition to a new mode of operation using this approach if the most recent operation in that mode resulted in an exceedance of an applicable emission standard measured with a CEMS or operating parameter limit prior to the hazardous waste residence time expiring; or

(iii) *Seamless transition.* Continue calculating rolling averages using data from the previous operating mode provided that both the operating limit and the averaging period for the parameter are the same for both modes of operation.

(r) *Averaging periods.* The averaging periods specified in this section for operating parameters are not-to-exceed averaging periods. You may elect to use shorter averaging periods. For example,

you may elect to use a 1-hour rolling average rather than the 12-hour rolling average specified in paragraph (l)(1)(i) of this section for mercury.

(s) *Hydrogen fluoride.* You must comply with the hydrogen fluoride gas emission standard either by complying with the following work practice standard in paragraph (s)(1) of this section or by establishing and complying with the operating parameter limits in paragraph (s)(2) of this section, as directed by §§ 63.1216 through 63.1221.

(1) *Work practice standard for emissions of hydrogen fluoride.* You must comply with one of the following provisions:

(i) If your hazardous waste combustor actively controls emissions of hydrogen chloride (*e.g.* using an air pollution control device) and has at least one AWCFO-interlocked operating parameter limit as specified in § 63.1209(o)(2) through (o)(4), then comply with the operating parameter limits specified for hydrogen chloride and chlorine gas under § 63.1209(o). Indicate in your comprehensive performance test report and notification of compliance that compliance with the hydrogen fluoride gas work practice standard is demonstrated by complying with the hydrogen chloride and chlorine gas operating parameter limits;

(ii) If you do not feed any material with detectable levels of fluorine to your hazardous waste combustor, then certify that no fluorine is fed to your hazardous waste combustor in the comprehensive test report. Indicate in your comprehensive performance test report and notification of compliance that compliance with the hydrogen fluoride gas work practice standard is demonstrated by certifying that no fluorine is fed to the combustor; or

(iii) Monitor and record in the operating record the total feedrate of fluorine (organic and inorganic) in all feedstreams as a 12-hour rolling average. Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate). In every comprehensive performance test plan, calculate the maximum MTEC of hydrogen fluoride since the previous comprehensive performance test. If the maximum MTEC is greater than the existing source solid fuel boiler hydrogen fluoride emission limit in § 63.1216(a)(8), then conduct a one-time emissions test for hydrogen fluoride gas during the comprehensive performance test. The one-time test does not need to be repeated at any subsequent comprehensive performance test,

regardless of the calculated maximum MTEC value.

(2) *Operating parameter limits for hydrogen fluoride.* You must comply with the hydrogen fluoride emission standard by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(i) *Feedrate of total fluorine and fluoride.* You must establish a 12-hour rolling average limit for the total feedrate of fluorine (organic and inorganic) in all feedstreams as the average of the test run averages.

(ii) *Maximum flue gas flowrate or production rate.* (A) As an indicator of gas residence time in the control device, you must establish a limit on the maximum flue gas flowrate, the maximum production rate, or another parameter that you document in the site-specific test plan as an appropriate surrogate for gas residence time, as the average of the maximum hourly rolling averages for each run.

(B) You must comply with this limit on an hourly rolling average basis;

(iii) *Wet scrubber.* If your combustor is equipped with a wet scrubber:

(A) If your source is equipped with a high energy wet scrubber such as a venturi, hydrosonic, collision, or free jet wet scrubber, you must establish a limit on minimum pressure drop across the wet scrubber on an hourly rolling average as the average of the test run averages;

(B) If your source is equipped with a low energy wet scrubber such as a spray tower, packed bed, or tray tower, you must establish a minimum pressure drop across the wet scrubber based on manufacturer's specifications. You must comply with the limit on an hourly rolling average;

(C) If your source is equipped with a low energy wet scrubber, you must establish a limit on minimum liquid feed pressure to the wet scrubber based on manufacturer's specifications. You must comply with the limit on an hourly rolling average;

(D) You must establish a limit on minimum pH on an hourly rolling average as the average of the test run averages;

(E) You must establish limits on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average as the average of the test run averages. If you establish limits on maximum flue gas flowrate under this paragraph, you need not establish a limit on maximum flue gas flowrate

under paragraph (s)(2)(ii) of this section; and

(iv) *Dry scrubber*. If your combustor is equipped with a dry scrubber, you must establish the following operating parameter limits:

(A) *Minimum sorbent feedrate*. You must establish a limit on minimum sorbent feedrate on an hourly rolling average as the average of the test run averages.

(B) *Minimum carrier fluid flowrate or nozzle pressure drop*. You must establish a limit on minimum carrier fluid (gas or liquid) flowrate or nozzle pressure drop based on manufacturer's specifications.

(C) *Sorbent specifications*. (1) You must specify and use the brand (*i.e.*, manufacturer) and type of sorbent used during the comprehensive performance test until a subsequent comprehensive performance test is conducted, unless you document in the site-specific performance test plan required under § 63.1207(e) and (f) key parameters that affect adsorption and establish limits on those parameters based on the sorbent used in the performance test.

(2) You may substitute at any time a different brand or type of sorbent provided that the replacement has equivalent or improved properties compared to the sorbent used in the performance test and conforms to the

key sorbent parameters you identify under paragraph (s)(2)(iv)(C)(1) of this section. You must record in the operating record documentation that the substitute sorbent will provide the same level of control as the original sorbent.

■ 8. Amend § 63.1210 by revising paragraph (a), and adding paragraphs (b)(3)(iii) and (d)(1)(iv) to read as follows:

§ 63.1210 What are the notification requirements?

(a) *Summary of requirements*. (1) You must submit the following notifications to the Administrator:

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Table 1 to Paragraph (a)(1)

Reference (40 CFR)	Notification
63.9(b)	Initial notifications that you are subject to subpart EEE of this part.
63.9(d)	Notification that you are subject to special compliance requirements.
63.9(j)	Notification and documentation of any change in information already provided under § 63.9.
63.1206(b)(5)(i)	Notification of changes in design, operation, or maintenance.
63.1206(c)(8)(iv)	Notification of excessive bag leak detection system exceedances.
63.1206(c)(9)(v)	Notification of excessive particulate matter detection system exceedances.
63.1207(e), 63.9(e) 63.9(g)(1) and (3)	Notification of performance test and continuous monitoring system evaluation, including the performance test plan and CMS performance evaluation plan. ¹
63.1210(b)	Notification of intent to comply.
63.1210(d), 63.1207(j), 63.1207(k), 63.1207(l), 63.9(h)	Notification of compliance, including summary of results of performance tests and continuous monitoring system performance evaluations.

¹ You may also be required on a case-by-case basis to submit a feedstream analysis plan under § 63.1209(c)(3).

(2) You must submit the following notifications to the Administrator if you request or elect to comply with alternative requirements:

Table 2 to Paragraph (a)(2)

Reference (40 CFR)	Notification, request, petition, or application
63.9(i)	You may request an adjustment to time periods or postmark deadlines for submittal and review of required information.
63.10(e)(3)(ii)	You may request to reduce the frequency of excess emissions and CMS performance reports.
63.10(f)	You may request to waive recordkeeping or reporting requirements.
63.1204(d)(2)(iii), 63.1220(d)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(iii), 63.1220(e)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(4), 63.1213, 63.6(i), 63.9(c)	You may request an extension of the compliance date for up to one year.
63.1206(b)(5)(i)(C)	You may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting after making a change in the design or operation that could affect compliance with emission standards and prior to submitting a revised Notification of Compliance.
63.1206(b)(9)	Owners and operators of lightweight aggregate kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas under certain conditions.
63.1206(b)(10)	Owners and operators of cement kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas under certain conditions.
63.1206(b)(14)	Owners and operators of incinerators may elect to comply with an alternative to the particulate matter standard.
63.1206(b)(15)	Owners and operators of cement and lightweight aggregate kilns may request to comply with the alternative to the interim standards for mercury.
63.1206(c)(2)(ii)(C)	You may request to make changes to the startup, shutdown, and malfunction plan.
63.1206(c)(5)(i)(C)	You may request an alternative means of control to provide control of combustion system leaks.
63.1206(c)(5)(i)(D)	You may request other techniques to prevent fugitive emissions without use of instantaneous pressure limits.
63.1207(c)(2)	You may request to base initial compliance on data in lieu of a comprehensive performance test.
63.1207(d)(3)	You may request more than 60 days to complete a performance test if additional time is needed for reasons beyond your control.

Reference (40 CFR)	Notification, request, petition, or application
63.1207(e)(3), 63.7(h)	You may request a time extension if the Administrator fails to approve or deny your test plan.
63.1207(h)(2)	You may request to waive current operating parameter limits during pretesting for more than 720 hours.
63.1207(f)(1)(ii)(D)	You may request a reduced hazardous waste feedstream analysis for organic hazardous air pollutants if the reduced analysis continues to be representative of organic hazardous air pollutants in your hazardous waste feedstreams.
63.1207(g)(2)(v)	You may request to operate under a wider operating range for a parameter during confirmatory performance testing.
63.1207(i)	You may request up to a one-year time extension for conducting a performance test (other than the initial comprehensive performance test) to consolidate testing with other state or federally-required testing.
63.1207(j)(4)	You may request more than 90 days to submit a Notification of Compliance after completing a performance test if additional time is needed for reasons beyond your control.
63.1207(l)(3)	After failure of a performance test, you may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting.
63.1209(a)(5), 63.8(f)	You may request: (1) Approval of alternative monitoring methods for compliance with standards that are monitored with a CEMS; and (2) approval to use a CEMS in lieu of operating parameter limits.
63.1209(g)(1)	You may request approval of: (1) Alternatives to operating parameter monitoring requirements, except for standards that you must monitor with a continuous emission monitoring system (CEMS) and except for requests to use a CEMS in lieu of operating parameter limits; or (2) a waiver of an operating parameter limit.
63.1209(l)(1)	You may request to extrapolate mercury feedrate limits.
63.1209(n)(2)	You may request to extrapolate semivolatile and low volatile metal feedrate limits.
63.1211(d)	You may request to use data compression techniques to record data on a less frequent basis than required by § 63.1209.

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* * *

(b) * * *

(3) * * *

(iii) Beginning August 3, 2026, submit the final NIC as a portable document format (PDF) upload according to § 63.1211(g).

* * *

(d) * * *

(1) * * *

(iv) Beginning June 3, 2027, or once the report template for this subpart has been available on the CEDRI website for one year, whichever date is later, submit the Notification of Compliance according to § 63.1211(g). When the report is submitted via CEDRI, the certifier's electronic signature during the submission process satisfies the

requirement in § 63.9(h)(2)(i) for the responsible official to sign and certify the accuracy of the report.

* * *

■ 9. Amend § 63.1211 by revising paragraphs (a) and (b) and adding paragraphs (e) through (g) to read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

(a) *Summary of reporting requirements.* You must submit the following reports to the Administrator:

Table 1 to Paragraph (a)

Reference (40 CFR)	Report
63.10(d)(4)	Compliance progress reports, if required as a condition of an extension of the compliance date granted under § 63.6(i).
63.10(d)(5)(i)	Periodic startup, shutdown, and malfunction reports.
63.10(d)(5)(ii)	Immediate startup, shutdown, and malfunction reports.
63.10(e)(3) and 63.1211(a)(1)	Excess emissions and continuous monitoring system performance report and summary report.
63.1206(c)(2)(ii)(B)	Startup, shutdown, and malfunction plan.
63.1206(c)(3)(vi)	Excessive exceedances reports.
63.1206(c)(4)(iv)	Emergency safety vent opening reports.
63.1211(f)	Performance test and performance evaluation reports.

(1) If a source fails to meet an applicable standard, report such events in the excess emissions and continuous monitoring system performance report and summary report. For each failure to meet an applicable standard, report the start date, start time, end date, end time, and cause of each failure. For each failure the report must also identify the affected sources and equipment, the applicable standard that was not met, an estimate of the quantity in pounds of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(2) Beginning August 3, 2026, submit the compliance progress report required under § 63.10(d)(4) and the periodic startup, shutdown, and malfunction reports required under § 63.10(d)(5)(i) as a portable document format (PDF) uploads according to § 63.1211(g).
(3) Beginning June 3, 2027, or once the report template for this subpart has been available on the CEDRI website for one year, whichever date is later, submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e)(3), including the information required by paragraph (a)(1) of this

section, according to § 63.1211(g). When the report is submitted via CEDRI, the certifier’s electronic signature during the submission process replaces the requirements in § 63.10(e)(3)(v), (e)(3)(vi)(L), and (e)(3)(vi)(M) of subpart A of this part to submit the date of the report and the name, title, and signature of the responsible official who is certifying the accuracy of the report.

(b) *Summary of recordkeeping requirements.* You must retain the following in the operating record:

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Table 2 to Paragraph (b)

Reference (40 CFR)	Document, Data, or Information
63.1200, 63.10(b) and 63.10 (c)	General. Information required to document and maintain compliance with the regulations of subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1204(d)(1)(ii), 63.1220(d)(1)(ii)	Documentation of mode of operation changes for cement kilns with in-line raw mills.
63.1204(d)(2)(ii), 63.1220(d)(2)(ii)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(ii), 63.1220(e)(2)(ii)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including sections 112 and 129, in lieu of the requirements of subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(b)(5)(ii)	Documentation that a change will not adversely affect compliance with the emission standards or operating requirements.
63.1206(b)(11)	Calculation of hazardous waste residence time.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(2)(v)(A)	Documentation of your investigation and evaluation of excessive exceedances during malfunctions.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(c)(2)	Feedstream analysis plan.
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii), 63.1209(s)(2)(iv)(C)	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.

Reference (40 CFR)	Document, Data, or Information
63.1209(k)(7)(i)(C)	Results of carbon bed performance monitoring.
63.1209(q)	Documentation of changes in modes of operation.
63.1211(c)	Documentation of compliance.
63.1211(e)	Documentation of startups, shutdowns, malfunctions, and failures to meet applicable standards.

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(e) *Other recordkeeping.* You must retain the following in the operating record:

(1) The start date, start time, and duration (hours) of each startup, shutdown, or malfunction of process, air pollution control, and monitoring equipment and whether the startup, shutdown, and malfunction plan was followed.

(2) For periods of startup, shutdown, and malfunction when the startup, shutdown, and malfunction plan was not followed, record and retain a list of the affected sources or equipment; actions taken to minimize emissions in accordance with §§ 63.6(e)(1)(i) and 63.8(c)(1)(i); any corrective actions taken to return the affected unit to its normal or usual manner of operation; whether the failure occurred during a period of startup, shutdown or malfunction; an estimate of the quantity of each regulated pollutant emitted; and a description of the method used to estimate the emissions.

(f) *Electronic Reporting.* Beginning on September 1, 2026, within 90 days after the date of completing each performance test or continuous emissions monitoring system (CEMS) performance evaluation (as defined in § 63.2) that includes a relative accuracy test audit (RATA), required by this subpart, you must submit the results of the performance test following the procedure specified in § 63.9(k). Submit the data 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 § 63.7(g)(2) in PDF format.

(g) *Reporting Confidential Business Information.* Where directed to this paragraph (g), the owner or operator must submit all subsequent reports or notifications in the format specified in

the referring paragraph to the EPA following the procedure specified in § 63.9(k), except any medium submitted as Confidential Business Information must be sent to the attention of the Hazardous Waste Combustion Sector Lead.

■ 10. Amend § 63.1212 by revising paragraph (c)(2) to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC?

* * * * *

(c) * * *

(2) The Administrator may assess the need, on a case-by-case basis for an information repository. When assessing the need for a repository, the Administrator shall consider the level of public interest, the presence of an existing repository, and any information available via the New Source Review and title V or other air permit processes. If the Administrator determines a need for a repository, then the Administrator shall notify the facility that it must establish and maintain an information repository.

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■ 11. Amend § 63.1214 by adding paragraph (c)(5) to read as follows:

§ 63.1214 Implementation and enforcement.

* * * * *

(c) * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 12. Amend § 63.1215 by revising paragraphs (a) through (f) to read as follows:

§ 63.1215 What are the health-based compliance alternatives for total chlorine?

(a) *General—(1) Overview.* You may establish and comply with health-based compliance alternatives for total chlorine under the procedures prescribed in this section for your hazardous waste combustors other than hydrochloric acid production furnaces. You may comply with these health-based compliance alternatives in lieu of the emission standards for total chlorine

provided under §§ 63.1216, 63.1217, and 63.1219 through 63.1221. To identify and comply with the limits, you must:

(i) Identify a total chlorine emission concentration (ppmv) expressed as chloride (Cl⁻) equivalent for each on site hazardous waste combustor. You may select total chlorine emission concentrations as you choose to demonstrate eligibility for the risk-based limits under this section, except as provided by paragraph (b)(7) of this section;

(ii) Apportion the total chlorine emission concentration between HCl and Cl₂ according to paragraph (b)(6)(i) of this section, and calculate HCl and Cl₂ emission rates (lb/hr) using the gas flowrate and other parameters from the most recent regulatory compliance test.

(iii) Calculate the annual average HCl-equivalent emission rate as prescribed in paragraph (b)(2) of this section.

(iv) Perform an eligibility demonstration to determine if your HCl-equivalent emission rate meets the national exposure standard and thus is below the annual average HCl-equivalent emission rate limit, as prescribed by paragraph (c) of this section;

(v) Submit your eligibility demonstration for review and approval, as prescribed by paragraph (e) of this section, which must include information to ensure that the 1-hour average HCl-equivalent emission rate limit is not exceeded, as prescribed by paragraph (d) of this section;

(vi) Demonstrate compliance with the annual average HCl-equivalent emission rate limit during the comprehensive performance test, as prescribed by the testing and monitoring requirements under paragraph (e) of this section;

(vii) Comply with compliance monitoring requirements, including establishing feedrate limits on total chlorine and chloride, and operating parameter limits on emission control equipment, as prescribed by paragraph (f) of this section; and

(viii) Comply with the requirements for changes, as prescribed by paragraph (h) of this section.

(2) **Definitions.** In addition to the definitions under § 63.1201, the following definitions apply to this section:

1-Hour Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELs as the health risk metric for acute exposure.

1-Hour Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELs as the health risk metric for acute exposure and which ensures that maximum 1-hour average ambient concentrations of HCl-equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

Acute Reference Exposure Level (aREL) means health thresholds below which there would be no adverse health effects for greater than once in a lifetime exposures of one hour. ARELs are developed by the California Office of Health Hazard Assessment and are available at <https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary>.

Annual Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure.

Annual Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure and which ensures that maximum annual average ambient concentrations of HCl equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

Hazard Index (HI) means the sum of more than one Hazard Quotient for multiple substances and/or multiple exposure pathways. In this section, the Hazard Index is the sum of the Hazard Quotients for HCl and chlorine.

Hazard Quotient (HQ) means the ratio of the predicted media concentration of a pollutant to the media concentration at which no adverse effects are expected. For chronic inhalation exposures, the HQ is calculated under this section as the air concentration divided by the RfC. For acute inhalation exposures, the HQ is calculated under

this section as the air concentration divided by the aREL.

Look-up table analysis means a risk screening analysis based on comparing the HCl-equivalent emission rate from the affected source to the appropriate HCl-equivalent emission rate limit specified in tables 1 through 4 of this section.

Reference Concentration (RfC) means an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

(b) **HCl-equivalent emission rates.** (1) You must express total chlorine emission rates for each hazardous waste combustor as HCl-equivalent emission rates.

(2) **Annual average rates.** You must calculate annual average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

Equation 1 to Paragraph (b)(2)

$$ER_{LTW} = ER_{HCl} + ER_{Cl_2} \times (RfC_{HCl}/RfC_{Cl_2})$$

Where:

ER_{LTW} is the annual average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering long-term exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl_2} is the emission rate of chlorine in lbs/hr

RfC_{HCl} is the reference concentration of HCl

RfC_{Cl_2} is the reference concentration of chlorine

(3) **1-hour average rates.** You must calculate 1-hour average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

Equation 2 to Paragraph (b)(3)

$$ER_{STW} = ER_{HCl} + ER_{Cl_2} \times (aREL_{HCl}/aREL_{Cl_2})$$

Where:

ER_{STW} is the 1-hour average HCl-toxicity-weighted emission rate (HCl-equivalent emission rate) considering 1-hour (short-term) exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl_2} is the emission rate of chlorine in lbs/hr

$aREL_{HCl}$ is the aREL for HCl

$/aREL_{Cl_2}$ is the aREL for chlorine

(4) You must use the RfC values for hydrogen chloride and chlorine found at <https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants>.

(5) You must use the aREL values for hydrogen chloride and chlorine found at

<https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary>.

(6) **Cl₂/HCl ratios**—(i) **Ratio for calculating annual average HCl-equivalent emission rates.** (A) To calculate the annual average HCl-equivalent emission rate (lb/hr) for each combustor, you must apportion the total chlorine emission concentration (ppmv chloride (Cl⁻) equivalent) between HCl and chlorine according to the historical average Cl₂/HCl volumetric ratio for all regulatory compliance tests.

(B) You must calculate HCl and Cl₂ emission rates (lb/hr) using the apportioned emission concentrations and the gas flowrate and other parameters from the most recent regulatory compliance test.

(C) You must calculate the annual average HCl-equivalent emission rate using these HCl and Cl₂ emission rates and the equation in paragraph (b)(2) of this section.

(ii) **Ratio for calculating 1-hour average HCl-equivalent emission rates.** (A) To calculate the 1-hour average HCl-equivalent emission rate for each combustor as a criterion for you to determine under paragraph (d) of this section if an hourly rolling average feedrate limit on total chlorine and chloride may be waived, you must apportion the total chlorine emission concentration (ppmv chloride (Cl⁻) equivalent) between HCl and chlorine according to the historical highest Cl₂/HCl volumetric ratio for all regulatory compliance tests.

(B) You must calculate HCl and Cl₂ emission rates (lb/hr) using the apportioned emission concentrations and the gas flowrate and other parameters from the most recent regulatory compliance test.

(C) You must calculate the 1-hour average HCl-equivalent emission rate using these HCl and Cl₂ emission rates and the equation in paragraph (b)(3) of this section.

(iii) **Ratios for new sources.** (A) You must use engineering information to estimate the Cl₂/HCl volumetric ratio for a new source for the initial eligibility demonstration.

(B) You must use the Cl₂/HCl volumetric ratio demonstrated during the initial comprehensive performance test to demonstrate in the Notification of Compliance that your HCl-equivalent emission rate does not exceed your HCl-equivalent emission rate limit.

(C) When approving the test plan for the initial comprehensive performance test, the permitting authority will establish a periodic testing requirement, such as every 3 months for 1 year, to

establish a record of representative Cl_2/HCl volumetric ratios.

(1) You must revise your HCl-equivalent emission rates and HCl-equivalent emission rate limits after each such test using the procedures prescribed in paragraphs (b)(6)(i) and (ii) of this section.

(2) If you no longer are eligible for the health-based compliance alternative, you must notify the permitting authority immediately and either:

(i) Submit a revised eligibility demonstration requesting lower HCl-equivalent emission rate limits, establishing lower HCl-equivalent emission rates, and establishing by downward extrapolation lower feedrate limits for total chlorine and chloride; or

(ii) Request a compliance schedule of up to three years to demonstrate compliance with the emission standards under §§ 63.1216, 63.1217, and 63.1219 through 63.1221.

(iv) *Unrepresentative or inadequate historical Cl_2/HCl volumetric ratios.* (A) If you believe that the Cl_2/HCl volumetric ratio for one or more historical regulatory compliance tests is not representative of the current ratio, you may request that the permitting authority allow you to screen those ratios from the analysis of historical ratios.

(B) If the permitting authority believes that too few historical ratios are available to calculate a representative average ratio or establish a maximum ratio, the permitting authority may require you to conduct periodic testing to establish representative ratios.

(v) *Updating Cl_2/HCl ratios.* You must include the Cl_2/HCl volumetric ratio demonstrated during each performance test in your database of historical Cl_2/HCl ratios to update the ratios you establish under paragraphs (b)(6)(i) and (ii) of this section for subsequent calculations of the annual average and 1-hour average HCl-equivalent emission rates.

(7) *Emission rates are capped.* The hydrogen chloride and chlorine emission rates you use to calculate the HCl-equivalent emission rate limit for incinerators, cement kilns, and lightweight aggregate kilns must not result in total chlorine emission concentrations exceeding:

(i) For incinerators that were existing sources on April 19, 1996: 77 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) For incinerators that are new or reconstructed sources after April 19, 1996: 21 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(iii) For cement kilns that were existing sources on April 19, 1996: 130 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(iv) For cement kilns that are new or reconstructed sources after April 19, 1996: 86 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(v) For lightweight aggregate kilns that were existing sources on April 19, 1996: 600 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(vi) For lightweight aggregate kilns that are new or reconstructed sources after April 19, 1996: 600 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen.

(c) *Eligibility demonstration*—(1) *General.* (i) You must perform an eligibility demonstration to determine whether the total chlorine emission rates you select for each on-site hazardous waste combustor meet the national exposure standards using either a look-up table analysis prescribed by paragraph (c)(3) of this section, or a site-specific compliance demonstration prescribed by paragraph (c)(4) of this section.

(ii) You must also determine in your eligibility demonstration whether each combustor may exceed the 1-hour HCl-equivalent emission rate limit absent an hourly rolling average limit on the feedrate of total chlorine and chloride, as provided by paragraph (d) of this section.

(2) *Definition of eligibility.* (i) Eligibility for the risk-based total chlorine standard is determined by comparing the annual average HCl-equivalent emission rate for the total chlorine emission rate you select for each combustor to the annual average HCl-equivalent emission rate limit.

(ii) The annual average HCl-equivalent emission rate limit ensures that the Hazard Index for chronic exposure from HCl and chlorine emissions from all on-site hazardous waste combustors is less than or equal to 1.0, rounded to the nearest tenths

decimal place (0.1), for the actual individual most exposed to the facility's emissions, considering off-site locations where people reside and where people congregate for work, school, or recreation.

(iii) Your facility is eligible for the health-based compliance alternative for total chlorine if either:

(A) The annual average HCl-equivalent emission rate for each on-site hazardous waste combustor is below the appropriate value in the look-up table determined under paragraph (c)(3) of this section; or

(B) The annual average HCl-equivalent emission rate for each on-site hazardous waste combustor is below the annual average HCl-equivalent emission rate limit you calculate based on a site-specific compliance demonstration under paragraph (c)(4) of this section.

(3) *Look-up table analysis.* Look-up tables for the eligibility demonstration are provided as tables 1 and 2 to this section.

(i) Table 1 presents annual average HCl-equivalent emission rate limits for sources located in flat terrain. For purposes of this analysis, flat terrain is terrain that rises to a level not exceeding one half the stack height within a distance of 50 stack heights.

(ii) Table 2 presents annual average HCl-equivalent emission rate limits for sources located in simple elevated terrain. For purposes of this analysis, simple elevated terrain is terrain that rises to a level exceeding one half the stack height, but that does not exceed the stack height, within a distance of 50 stack heights.

(iii) To determine the annual average HCl-equivalent emission rate limit for a source from the look-up table, you must use the stack height and stack diameter for your hazardous waste combustors and the distance between the stack and the property boundary.

(iv) If any of these values for stack height, stack diameter, and distance to nearest property boundary do not match the exact values in the look-up table, you must use the next lowest table value.

(v) *Adjusted HCl-equivalent emission rate limit for multiple on-site combustors.* (A) If you have more than one hazardous waste combustor on site, the sum across all hazardous waste combustors of the ratio of the adjusted HCl-equivalent emission rate limit to the HCl-equivalent emission rate limit provided by tables 1 or 2 cannot exceed 1.0, according to the following equation:

$$\sum_{i=1}^n \frac{\text{HCl-Equivalent Emission Rate Limit Adjusted}_i}{\text{HCl-Equivalent Emission Rate Limit Table}_i} \leq 1.0$$

Where:

i = number of on-site hazardous waste combustors;

HCl-Equivalent Emission Rate Limit Adjusted _{i} means the apportioned, allowable HCl-equivalent emission rate limit for combustor i , and

HCl-Equivalent Emission Rate Limit Table _{i} means the HCl-equivalent emission rate limit from table 1 or 2 to § 63.1215 for combustor i .

(B) The adjusted HCl-equivalent emission rate limit becomes the HCl-equivalent emission rate limit.

(4) *Site-specific compliance demonstration.* (i) You may use any scientifically-accepted peer-reviewed risk assessment methodology for your site-specific compliance demonstration to calculate an annual average HCl-equivalent emission rate limit for each on-site hazardous waste combustor. An example of one approach for performing the demonstration for air toxics can be found in the EPA's "Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document," which may be obtained through the EPA's Air Toxics website at https://www.epa.gov/sites/default/files/2013-08/documents/volume_2_facilityassess.pdf.

(ii) The annual average HCl-equivalent emission rate limit is the HCl-equivalent emission rate that ensures that the Hazard Index associated with maximum annual average exposures is not greater than 1.0 rounded to the nearest tenths decimal place (0.1).

(iii) To determine the annual average HCl-equivalent emission rate limit, your site-specific compliance demonstration must, at a minimum:

(A) Estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations;

(B) Estimate the inhalation exposure for the actual individual most exposed to the facility's emissions from hazardous waste combustors, considering off-site locations where people reside and where people congregate for work, school, or recreation;

(C) Use site-specific, quality-assured data wherever possible;

(D) Use health-protective default assumptions wherever site-specific data are not available, and;

(E) Contain adequate documentation of the data and methods used for the assessment so that it is transparent and

can be reproduced by an experienced risk assessor and emissions measurement expert.

(iv) Your site-specific compliance demonstration need not:

(A) Assume any attenuation of exposure concentrations due to the penetration of outdoor pollutants into indoor exposure areas;

(B) Assume any reaction or deposition of the emitted pollutants during transport from the emission point to the point of exposure.

(d) *Assurance that the 1-hour HCl-equivalent emission rate limit will not be exceeded.* To ensure that the 1-hour HCl-equivalent emission rate limit will not be exceeded when complying with the annual average HCl-equivalent emission rate limit, you must establish a 1-hour average HCl-equivalent emission rate for each combustor, establish a 1-hour average HCl-equivalent emission rate limit for each combustor, and consider site-specific factors including prescribed criteria to determine if the 1-hour average HCl-equivalent emission rate limit may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride. If the 1-hour average HCl-equivalent emission rate limit may be exceeded, you must establish an hourly rolling average feedrate limit on total chlorine as provided by paragraph (f)(3) of this section.

(1) *1-hour average HCl-equivalent emission rate.* You must calculate the 1-hour average HCl-equivalent emission rate from the total chlorine emission concentration you select for each source as prescribed in paragraph (b)(6)(ii)(C) of this section.

(2) *1-hour average HCl-equivalent emission rate limit.* You must establish the 1-hour average HCl-equivalent emission rate limit for each affected source using either a look-up table analysis or site-specific analysis:

(i) *Look-up table analysis.* Look-up tables are provided for 1-hour average HCl-equivalent emission rate limits as tables 3 and 4 to this section. Table 3 provides limits for facilities located in flat terrain. Table 4 provides limits for facilities located in simple elevated terrain. You must use the tables to establish 1-hour average HCl-equivalent emission rate limits as prescribed in paragraphs (c)(3)(iii) through (v) of this section for annual average HCl-equivalent emission rate limits.

(ii) *Site-specific analysis.* The 1-hour average HCl-equivalent emission rate limit is the HCl-equivalent emission rate that ensures that the Hazard Index associated with maximum 1-hour average exposures is not greater than 1.0 rounded to the nearest tenths decimal place (0.1). You must follow the risk assessment procedures under paragraph (c)(4) of this section to estimate short-term inhalation exposures through the estimation of maximum 1-hour average ambient concentrations.

(3) *Criteria for determining whether the 1-hour HCl-equivalent emission rate may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride.* An hourly rolling average feedrate limit on total chlorine and chloride is waived if you determine considering the criteria listed below that the long-term feedrate limit (and averaging period) established under paragraph (c)(4)(i) of this section will also ensure that the 1-hour average HCl-equivalent emission rate will not exceed the 1-hour average HCl-equivalent emission rate limit you calculate for each combustor.

(i) The ratio of the 1-hour average HCl-equivalent emission rate based on the total chlorine emission rate you select for each hazardous waste combustor to the 1-hour average HCl-equivalent emission rate limit for the combustor; and

(ii) The potential for the source to vary total chlorine and chloride feedrates substantially over the averaging period for the feedrate limit established under paragraph (c)(4)(i) of this section.

(e) *Review and approval of eligibility demonstrations—(1) Content of the eligibility demonstration.*—(i) *General.* The eligibility demonstration must include the following information, at a minimum:

(A) Identification of each hazardous waste combustor combustion gas emission point (e.g., generally, the flue gas stack);

(B) The maximum and average capacity at which each combustor will operate, and the maximum rated capacity for each combustor, using the metric of stack gas volume (under both actual and standard conditions) emitted per unit of time, as well as any other metric that is appropriate for the combustor (e.g., million Btu/hr heat input for boilers; tons of dry raw material feed/hour for cement kilns);

(C) Stack parameters for each combustor, including, but not limited to stack height, stack diameter, stack gas temperature, and stack gas exit velocity;

(D) Plot plan showing all stack emission points, nearby residences and property boundary line;

(E) Identification of any stack gas control devices used to reduce emissions from each combustor;

(F) Identification of the RfC values used to calculate annual average HCl-equivalent emission rates and the aREL values used to calculate 1-hour average HCl-equivalent emission rates;

(G) Calculations used to determine the annual average and 1-hour average HCl-equivalent emission rates and rate limits, including calculation of the Cl₂/HCl ratios as prescribed by paragraph (b)(6) of this section;

(ii) *Additional content to implement the annual average HCl-equivalent emission rate limit.* You must include the following in your eligibility demonstration to implement the annual average HCl-equivalent emission rate limit:

(A) For incinerators, cement kilns, and lightweight aggregate kilns, calculations to confirm that the annual average HCl-equivalent emission rate that you calculate from the total chlorine emission rate you select for each combustor does not exceed the limits provided by paragraph (b)(7) of this section;

(B) Comparison of the annual average HCl-equivalent emission rate limit for each combustor to the annual average HCl-equivalent emission rate for the total chlorine emission rate you select for each combustor;

(C) The annual average HCl-equivalent emission rate limit for each hazardous waste combustor, and the limits on operating parameters required under paragraph (g)(1) of this section;

(D) Determination of the long-term chlorine feedrate limit, including the total chlorine system removal efficiency for sources that establish an (up to) annual rolling average feedrate limit under paragraph (g)(2)(ii) of this section;

(iii) *Additional content to implement the 1-hour average HCl-equivalent emission rate limit.* You must include the following in your eligibility demonstration to implement the 1-hour average HCl-equivalent emission rate limit:

(A) Determination of whether the combustor may exceed the 1-hour HCl-equivalent emission rate limit absent an hourly rolling average chlorine feedrate limit, including:

(1) Determination of the 1-hour average HCl-equivalent emission rate

from the total chlorine emission rate you select for the combustor;

(2) Determination of the 1-hour average HCl-equivalent emission rate limit using either look-up tables 3 and 4 to this section or site-specific risk analysis;

(3) Determination of the ratio of the 1-hour average HCl-equivalent emission rate to the 1-hour average HCl-equivalent emission rate limit for the combustor; and

(4) The potential for the source to vary total chlorine and chloride feedrates substantially over the averaging period for the long-term feedrate limit established under paragraphs (g)(2)(i) and (ii) of this section; and

(B) Determination of the hourly rolling average chlorine feedrate limit, including the total chlorine system removal efficiency.

(iv) *Additional content of a look-up table demonstration.* If you use the look-up table analysis to establish HCl-equivalent emission rate limits, your eligibility demonstration must also contain, at a minimum, the following:

(A) Documentation that the facility is located in either flat or simple elevated terrain; and

(B) For facilities with more than one on-site hazardous waste combustor, documentation that the sum of the ratios for all such combustors of the HCl-equivalent emission rate to the HCl-equivalent emission rate limit does not exceed 1.0.

(v) *Additional content of a site-specific compliance demonstration.* If you use a site-specific compliance demonstration, your eligibility demonstration must also contain, at a minimum, the following information to support your determination of the annual average HCl-equivalent emission rate limit for each combustor:

(A) Identification of the risk assessment methodology used;

(B) Documentation of the fate and transport model used;

(C) Documentation of the fate and transport model inputs, including the stack parameters listed in paragraph (d)(1)(i)(C) of this section converted to the dimensions required for the model;

(D) As applicable:

(1) Meteorological data;

(2) Building, land use, and terrain data;

(3) Receptor locations and population data, including areas where people congregate for work, school, or recreation; and

(4) Other facility-specific parameters input into the model;

(E) Documentation of the fate and transport model outputs; and

(F) Documentation of any exposure assessment and risk characterization calculations.

(2) *Review and approval*—(i) *Existing sources.* (A) If you operate an existing source, you must submit the eligibility demonstration to your permitting authority for review and approval not later than 12 months prior to the compliance date. Before August 3, 2026, you must also submit a separate copy of the eligibility demonstration to: U.S. EPA, Risk and Exposure Assessment Group, Emission Standards Division (C404-01), Attn: Group Leader, Research Triangle Park, North Carolina 27711, electronic mail address REAG@epa.gov. Beginning August 3, 2026, you must also submit a separate copy as a portable document format (PDF) upload according to § 63.1211(g) and no electronic mail submission is required.

(B) Your permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or to achieve the MACT standards for total chlorine under §§ 63.1216, 63.1217, and 63.1219 through 63.1221. If your eligibility demonstration is disapproved, the permitting authority may extend the compliance date of the total chlorine standards up to one year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT total chlorine standards.

(C) If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration provided that you have made a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner. If the permitting authority believes that you have not made a good faith effort to provide complete and accurate information or to respond to any requests for additional information, however, the authority may notify you in writing by the compliance

date that you have not met the conditions for complying with the health-based compliance alternative without prior approval. Such notice will explain the basis for concluding that you have not made a good faith effort to comply with the health-based compliance alternative by the compliance date.

(D) If your permitting authority issues a notice of intent to disapprove your eligibility demonstration after the compliance date, the authority will identify the basis for that notice and specify how much time you will have to submit additional information or to comply with the MACT standards for total chlorine under §§ 63.1216, 63.1217, and 63.1219 through 63.1221. The permitting authority may extend the compliance date of the total chlorine standards up to one-year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT standards for total chlorine.

(ii) *New or reconstructed sources*—(A) *General*. The procedures for review and approval of eligibility demonstrations applicable to existing sources under paragraph (e)(2)(i) of this section also apply to new or reconstructed sources, except that the date you must submit the eligibility demonstration is as prescribed in this paragraph (e)(2)(ii).

(B) If you operate a new or reconstructed source that starts up before April 12, 2007, or a solid fuel boiler or liquid fuel boiler that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before April 12, 2007, you must either:

(1) Comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, and 63.1219 through 63.1221, by October 12, 2005, or upon startup, whichever is later, except for a standard that is more stringent than the standard proposed on April 20, 2004 for your source. If a final standard is more stringent than the proposed standard, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard; or

(2) Submit an eligibility demonstration for review and approval under this section by April 12, 2006, and comply with the HCl-equivalent emission rate limits and operating requirements you establish in the eligibility demonstration.

(C) If you operate a new or reconstructed source that starts up on or after April 12, 2007, or a solid fuel boiler or liquid fuel boiler that is an area source that increases its emissions or its

potential to emit such that it becomes a major source of HAP on or after April 12, 2007, you must either:

(1) Comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, and 63.1219 through 63.1221 upon startup. If the final standard is more stringent than the standard proposed for your source on April 20, 2004, however, and if you start operations before October 14, 2008, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard; or

(2) Submit an eligibility demonstration for review and approval under this section 12 months prior to startup.

(3) The operating requirements in the eligibility demonstration are applicable requirements for purposes of parts 70 and 71 of this chapter and will be incorporated in the title V or other air permit.

(f) *Testing requirements*—(1) *General*. You must comply with the requirements for comprehensive performance testing under § 63.1207.

(2) *System removal efficiency*. (i) You must calculate the total chlorine removal efficiency of the combustor during each run of the comprehensive performance test.

(ii) You must calculate the average system removal efficiency as the average of the test run averages.

(iii) If your source does not control emissions of total chlorine, you must assume zero system removal efficiency.

(3) *Annual average HCl-equivalent emission rate limit*. If emissions during the comprehensive performance test exceed the annual average HCl-equivalent emission rate limit, eligibility for emission limits under this section is not affected. This emission rate limit is an annual average limit even though compliance is based on a 12-hour or (up to) an annual rolling average feedrate limit on total chlorine and chloride because the feedrate limit is also used for compliance assurance for the semivolatile metal emission standard

(4) *1-hour average HCl-equivalent emission rate limit*. Total chlorine emissions during each run of the comprehensive performance test cannot exceed the 1-hour average HCl-equivalent emission rate limit.

(5) *Test methods*. (i) If you operate a cement kiln or a combustor equipped with a dry acid gas scrubber, you must use EPA Method 320 or 321 of appendix A to this part, or an equivalent method, to measure hydrogen chloride, and the back-half (caustic impingers) of EPA Method 26 or 26A of appendix A–8 to

part 60 of this chapter, or an equivalent method, to measure chlorine gas.

(ii) *Bromine and sulfur considerations*. If you operate an incinerator, boiler, or lightweight aggregate kiln and your feedstreams contain bromine or sulfur during the comprehensive performance test at levels specified under paragraph (e)(2)(ii)(B) of this section, you must use EPA Method 320 or 321 of appendix A to this part, or an equivalent method, to measure hydrogen chloride, and EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter, or an equivalent method, to measure chlorine and hydrogen chloride, and determine your chlorine emissions as follows:

(A) You must determine your chlorine emissions to be the higher of the value measured by EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter, or an equivalent method, or the value calculated by the difference between the combined hydrogen chloride and chlorine levels measured by EPA Method 26 or 26A of appendix A–8 to part 60 of this chapter, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320 or 321 of appendix A to this part, or an equivalent method.

(B) The procedures under paragraph (f)(2)(ii) of this section for determining hydrogen chloride and chlorine emissions apply if you feed bromine or sulfur during the performance test at the levels specified in this paragraph (f)(5)(ii)(B):

(1) If the bromine/chlorine ratio in feedstreams is greater than 5 percent by mass; or

(2) If the sulfur/chlorine ratio in feedstreams is greater than 50 percent by mass.

* * * * *

■ 13. Revise § 63.1216 to read as follows:

§ 63.1216 What are the standards for solid fuel boilers that burn hazardous waste?

(a) *Emission limits for existing sources*. You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section;

(2) Mercury in excess of 11 µg/dscm corrected to 7 percent oxygen;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2, emissions in excess of 180 µg/dscm, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium combined, except for an area source as defined under § 63.2,

emissions in excess of 380 µg/dscm, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine combined, except for an area source as defined under § 63.2, emissions in excess of 440 parts per million by volume, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 68 mg/dscm corrected to 7 percent oxygen;

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, emissions in excess of 6.2 parts per million by volume, dry basis and corrected to 7 percent oxygen; and

(9) For hydrogen cyanide, except for an area source as defined under § 63.2, emissions in excess of 5.0 parts per million by volume, dry basis and corrected to 7 percent oxygen.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section;

(2) Mercury in excess of 11 µg/dscm corrected to 7 percent oxygen;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2, emissions in excess of 180 µg/dscm, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium combined, except for an area source as defined under § 63.2, emissions in excess of 190 µg/dscm, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine combined, except for an area source as defined under § 63.2, emissions in excess of 73 parts per million by volume, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 34 mg/dscm corrected to 7 percent oxygen;

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, emissions in excess of 6.2 parts per million by volume, dry basis and corrected to 7 percent oxygen; and

(9) For hydrogen cyanide, except for an area source as defined under § 63.2, emissions in excess of 5.0 parts per million by volume, dry basis and corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard*—(1) 99.99% DRE.

Except as provided in paragraph (c)(2) of this section, you must achieve a DRE of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

Equation 1 to Paragraph (c)(1)

$$\text{DRE} = [1 - (W_{\text{out}} + W_{\text{in}})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE.* If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the POHCs in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least five significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Alternative to the particulate matter standard*—(1) General. In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing solid fuel boilers.* (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt,

manganese, and nickel in excess of 380 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(3) *Alternative metal emission control requirements for new solid fuel boilers.*

(i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 190 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(f) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for arsenic, beryllium, and chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under §§ 266.105 through 266.107 of this chapter to control those pollutants.

■ 14. Revise § 63.1217 to read as follows:

§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?

(a) *Emission limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) (i) Dioxins and furans in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for liquid fuel boilers equipped with a dry air pollution control system; or (ii) Either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section for sources not equipped with a dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system

followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this emission limit;

(2) For mercury, except as provided for in paragraph (a)(2)(iii) of this section:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 19 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value 10,000 Btu/lb or greater, emissions in excess of 4.2×10^{-5} lbs mercury attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(iii) The boiler operated by Diversified Scientific Services, Inc. with EPA identification number TND982109142, and which burns radioactive waste mixed with hazardous waste, must comply with the mercury emission standard under § 63.1219(a)(2);

(3) For cadmium and lead combined, except for an area source as defined under § 63.2,

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 150 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 8.2×10^{-5} lbs combined cadmium and lead emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(4) For chromium, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 370 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.3×10^{-4} lbs chromium emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the

hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 31 parts per million by volume, combined emissions, expressed as a chloride (Cl –) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.1×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 80 mg/dscm corrected to 7 percent oxygen;

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, you must follow the work practice standard as defined under § 63.1209(s)(1); and

(9) For hydrogen cyanide, except for an area source as defined under § 63.2:

(i) If your liquid fuel boiler has a heat input capacity of greater than 50 MMBTU/hr and less than or equal to 250 MMBTU/hr, emissions in excess of 2.7 parts per million by volume, dry basis and corrected to 7 percent oxygen;

(ii) If your liquid fuel boiler has a heat input capacity of greater than 250 MMBTU/hr, emissions in excess of 3.4 parts per million by volume, dry basis and corrected to 7 percent oxygen.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1)(i) Dioxins and furans in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for liquid fuel boilers equipped with a dry air pollution

control system; or (ii) Either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section for sources not equipped with a dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this emission limit;

(2) For mercury:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 6.8 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.2×10^{-6} lbs mercury emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 78 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value greater than or equal to 10,000 Btu/lb, emissions in excess of 6.2×10^{-6} lbs combined cadmium and lead emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(4) For chromium, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 12 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.4×10^{-5} lbs chromium emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis

and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 31 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.1×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 20 mg/dscm corrected to 7 percent oxygen;

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, you must follow the work practice standard as defined under § 63.1209(s)(1); and

(9) For hydrogen cyanide, except for an area source as defined under § 63.2:

(i) If your liquid fuel boiler has a heat input capacity of greater than 50 MMBTU/hr and less than or equal to 250 MMBTU/hr, emissions in excess of 1.2 parts per million by volume, dry basis and corrected to 7 percent oxygen;

(ii) If your liquid fuel boiler has a heat input capacity of greater than 250 MMBTU/hr, emissions in excess of 1.1 parts per million by volume, dry basis and corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard*—(1) 99.99% DRE. Except as provided in paragraph (c)(2) of this section, you must achieve a DRE of 99.99% for each principle organic

hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

Equation 1 to Paragraph (c)(1)

$$DRE = [1 - (W_{out} \div W_{in})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) 99.9999% DRE. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs)*. (i) You must treat the POHCs in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures*. The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least five significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Alternative to the particulate matter standard*—(1) *General*. In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing liquid fuel boilers*. (i) When you burn hazardous waste with a heating value less than 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium, combined, in excess of 150 µg/dscm, corrected to 7 percent oxygen; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel, combined, in excess of 370 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with a heating value of 10,000 Btu/lb or greater:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 8.2×10^{-5} lbs combined emissions of cadmium, lead, and selenium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain either in excess of 1.3×10^{-4} lbs combined emissions of antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(3) *Alternative metal emission control requirements for new liquid fuel boilers.* (i) When you burn hazardous waste with a heating value less than 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium, combined, in excess of 78 µg/dscm, corrected to 7 percent oxygen; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel, combined, in excess of 12 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with a heating value greater than or equal to 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 6.2×10^{-6} lbs combined emissions of cadmium, lead, and selenium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain either in excess of 1.4×10^{-5} lbs combined emissions of antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel attributable to the hazardous

waste per million Btu heat input from the hazardous waste;

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(f) Elective standards for area sources. Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under §§ 266.105 through 266.107 of this chapter to control those pollutants.

■ 15. Revise § 63.1218(d) to read as follows:

§ 63.1218 What are the standards for hydrochloric acid production furnaces that burn hazardous waste?

* * * * *

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least five significant figures, you may round the resultant emission levels to two significant figures to document compliance.

* * * * *

■ 16. Revise § 63.1219 to read as follows:

§ 63.1219 What are the replacement standards for hazardous waste incinerators?

(a) Emission limits for existing sources. You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) For incinerators equipped with either a waste heat boiler or dry air pollution control system, either:

(A) Emissions in excess of 0.20 ng TEQ/dscm, corrected to 7 percent oxygen; or

(B) Emissions in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, provided that the combustion gas temperature at the inlet to the initial particulate matter control device is 400 °F or lower based on the average of the test run average temperatures. (For purposes of compliance, operation of a

wet particulate matter control device is presumed to meet the 400 °F or lower requirement);

(ii) Emissions in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for incinerators not equipped with either a waste heat boiler or dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this standard;

(2) Mercury in excess of 130 µg/dscm, corrected to 7 percent oxygen;

(3) Cadmium and lead in excess of 230 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 92 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas (total chlorine) in excess of 32 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen;

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 0.013 gr/dscf corrected to 7 percent oxygen; and

(8) For hydrogen fluoride, except for an area source as defined under § 63.2,

you must follow the work practice standard as defined under § 63.1209(s)(1).

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) (i) Dioxins and furans in excess of 0.11 ng TEQ/dscm corrected to 7 percent oxygen for incinerators equipped with either a waste heat boiler or dry air pollution control system; or

(ii) Dioxins and furans in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen for sources not equipped with either a waste heat boiler or dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this standard;

(2) Mercury in excess of 8.1 µg/dscm, corrected to 7 percent oxygen;

(3) Cadmium and lead in excess of 10 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 23 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas in excess of 21 parts per million by volume, combined emissions, expressed

as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen;

(7) Except as provided by paragraph (e) of this section, particulate matter emissions in excess of 0.0016 gr/dscf corrected to 7 percent oxygen; and

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, you must follow the work practice standard as defined under § 63.1209(s)(1).

(c) *Destruction and removal efficiency (DRE) standard—(1) 99.99% DRE.*

Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

Equation 1 to Paragraph (c)(1)

$$\text{DRE} = [1 - (\text{W}_{\text{out}}/\text{W}_{\text{in}})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE.* If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituent (POHC).* (i) You must treat each POHC in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and

(b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least five significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Alternative to the particulate matter standard—(1) General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing incinerators.*

(i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 230 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 92 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(3) *Alternative metal emission control requirements for new incinerators.* (i)

You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 10 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 23 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

■ 17. Amend § 63.1220 by:

■ a. Revising paragraphs (a)(3)(ii) and (a)(4)(ii);

■ b. Adding paragraphs (a)(8) and (9);

■ c. Revising paragraphs (b)(3)(ii) and (b)(4)(ii);

■ d. Adding paragraphs (b)(8) and (9); and

■ e. Revising paragraph (f).

The revisions and additions read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

(a) * * *

(3) * * *

(ii) Emissions in excess of 330 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) * * *

(ii) Emissions in excess of 56 µg/dscm, combined emissions, corrected to 7 percent oxygen;

* * * * *

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, you must follow the work practice standard as defined under § 63.1209(s)(1); and

(9) For hydrogen cyanide, except for an area source as defined under § 63.2, emissions in excess of 56 parts per million by volume, dry basis and corrected to 7 percent oxygen.

(b) * * *

(3) * * *

(ii) Emissions in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) * * *

(ii) Emissions in excess of 54 µg/dscm, combined emissions, corrected to 7 percent oxygen;

* * * * *

(8) For hydrogen fluoride, except for an area source as defined under § 63.2, you must follow the work practice standard as defined under § 63.1209(s)(1); and

(9) For hydrogen cyanide, except for an area source as defined under § 63.2, emissions in excess of 1.8 parts per million by volume, dry basis and corrected to 7 percent oxygen.

* * * * *

(f) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least five significant figures, you may round the resultant emission levels to two significant figures to document compliance.

* * * * *

■ 18. Revise § 63.1221 to read as follows:

§ 63.1221 What are the replacement standards for hazardous waste burning lightweight aggregate kilns?

(a) Emission and hazardous waste feed limits for existing sources. You must not discharge or cause combustion gases to be emitted into the atmosphere or feed hazardous waste that contain:

(1) For dioxins and furans, either:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system that immediately follows the last combustion chamber) to 400 °F or lower based on the average of the test run average temperatures. You must also notify in writing the RCRA authority that you are complying with this option;

(2) For mercury, either:

(i) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(ii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 3.0×10^{-4} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 250 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) In excess of 9.5×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(ii) Emissions in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter emissions in excess of 0.025 gr/dscf, corrected to 7 percent oxygen.

(b) *Emission and hazardous waste feed limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere or feed hazardous waste that contain:

(1) For dioxins and furans, either:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system that immediately follows the last combustion chamber) to 400 °F or lower based on the average of the test run average temperatures. You must also notify in writing the RCRA authority that you are complying with this option;

(2) For mercury, either:

(i) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(ii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 3.7×10^{-5} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 43 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) In excess of 3.3×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(ii) Emissions in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7

percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as a chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter emissions in excess of 0.0098 gr/dscf corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard*—(1) *99.99% DRE*.

Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

Equation 1 to Paragraph (c)(1)

$$\text{DRE} = [1 - (W_{\text{out}}/W_{\text{in}})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE*. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a destruction and removal efficiency (DRE) of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to burn hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs)*. (i) You must treat each POHC in the waste feed that you

specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures*. The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least five significant figures, you may round the resultant emission levels to two significant figures to document compliance.

19. Revise table 1 to subpart EEE of part 63 to read as follows:

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Table 1 to Subpart EEE of Part 63—General Provisions Applicable to Subpart EEE

Reference (40 CFR)	Applies to subpart EEE	Explanation
63.1	Yes	
63.2	Yes	
63.3	Yes	
63.4	Yes	
63.5	Yes	
63.6(a), (b), (c), (d), and (e)	Yes	
63.6(f)	Yes	Except that the performance test requirements of Sec. 63.1207 apply instead of § 63.6(f)(2)(iii)(B).
63.6(g) and (h)	Yes	
63.6(i)	Yes	Section 63.1213 specifies that the compliance date may also be extended for inability to install necessary emission control equipment by the compliance date because of implementation of pollution prevention or waste minimization controls.
63.6(j)	Yes	
63.7(a)	Yes	Except § 63.1207(e)(3) allows you to petition the Administrator under § 63.7(h) to provide an extension of time to conduct a performance test.
63.7(b)	Yes	Except § 63.1207(e) requires you to submit the site-specific test plan for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(c)	Yes	Except § 63.1207(e) requires you to submit the site-specific test plan (including the quality assurance provisions under § 63.7(c)) for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(d)	Yes	
63.7(e)(1)	No	§ 63.1207 prescribes operations during performance testing and § 63.1209 specifies operating limits that will be established during performance testing (such that testing is likely to be representative of the

Reference (40 CFR)	Applies to subpart EEE	Explanation
		extreme range of normal performance).
63.7(e) (2)-(4)	Yes	
63.7(f)	Yes	
63.7(g)	Yes	Except § 63.1207(j) requiring that you submit the results of the performance test (and the notification of compliance) within 90 days of completing the test, unless the Administrator grants a time extension, applies instead of § 63.7(g)(1). Additionally, you must submit the results in the manner specified in §§ 63.1207(j) and 63.1211(f).
63.7(h)	Yes	Except § 63.1207(c)(2) allows data in lieu of the initial comprehensive performance test, and § 63.1207(m) provides a waiver of certain performance tests. You must submit requests for these waivers with the site-specific test plan.
63.8(a) and (b)	Yes	
63.8(c)	Yes	Except: (1) § 63.1211(c) that requires you to install, calibrate, and operate CMS by the compliance date applies instead of § 63.8(c)(3); and (2) the performance specifications for CO, HC, and O ₂ CEMS in appendix B to part 60 of this chapter requiring that the detectors measure the sample concentration at least once every 15 seconds for calculating an average emission level once every 60 seconds apply instead of § 63.8(c)(4)(ii).
63.8(d)	Yes	
63.8(e)	Yes	Except § 63.1207(e) requiring you to submit the site-specific comprehensive performance test plan and the CMS performance evaluation test plan for approval at least one year prior to the planned test date applies instead of § 63.8(e)(2) and (3)(iii) and performance evaluation results must be reported in accordance with § 63.1211(f).

Reference (40 CFR)	Applies to subpart EEE	Explanation
63.8(f) and (g)	Yes	
63.9(a)	Yes	
63.9(b)	Yes	<i>Note:</i> Section 63.9(b)(1)(ii) pertains to notification requirements for area sources that become a major source, and § 63.9(b)(2)(v) requires a major source determination. Although area sources are subject to all provisions of this subpart (subpart EEE), these sections nonetheless apply because the major source determination may affect the applicability of part 63 standards or title V permit requirements to other sources (i.e., other than a hazardous waste combustor) of hazardous air pollutants at the facility.
63.9(c) and (d)	Yes	
63.9(e)	Yes	Except § 63.1207(e) which requires you to submit the comprehensive performance test plan for approval one year prior to the planned performance test date applies instead of § 63.9(e).
63.9(f)	Yes	Section 63.9(f) applies if you are allowed under § 63.1209(a)(1)(v) to use visible determination of opacity for compliance in lieu of a COMS.
63.9(g)	Yes	Except § 63.9(g)(2) pertaining to COMS does not apply.
63.9(h)	Yes	Except § 63.1207(j) requiring you to submit the notification of compliance within 90 days of completing a performance test unless the Administrator grants a time extension applies instead of § 63.9(h)(2)(iii). <i>Note:</i> Even though area sources are subject to this subpart, the major source determination required by § 63.9(h)(2)(i)(E) is applicable to hazardous waste combustors for the reasons discussed above.
63.9(i) and (j)	Yes	
63.9(k)	Yes	
63.10(a)	Yes	

Reference (40 CFR)	Applies to subpart EEE	Explanation
63.10(b)(1)	Yes	
63.10(b)(2)(i) and (ii)	No	§ 63.1211(e) prescribes recordkeeping requirements during periods of startup, shutdown, and malfunction.
63.10(b)(2)(iii)	Yes	
63.10(b)(2)(iv)	No	§ 63.1211(e) prescribes recordkeeping requirements during periods of startup, shutdown, and malfunction.
63.10(b)(2)(v)-(xiv)	Yes	
63.10(b)(3)	Yes	
63.10(c)	Yes	
63.10(d)(1)	Yes	
63.10(d)(2)	No	§ 63.1211(f) prescribes the format and timeframe for reporting the results of performance tests.
63.10(d)(3) and (4)	Yes	
63.10(e) and (f)	Yes	Except the results of performance evaluations must be submitted according to § 63.1211(f)
63.11	No	
63.12-63.15	Yes	

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■ 20. Amend appendix A to subpart EEE of part 63 by revising sections 2.7, 5 introductory text, 5.1, 6.3.5, 6.4.1, 6.6, and 6.7 to read as follows:

Appendix A to Subpart EEE of Part 63—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors

* * * * *

2. Definitions

* * * * *

2.7 *Absolute Calibration Audit (ACA)*. Equivalent to calibration error (CE) test defined in the appropriate performance specification using EPA traceability protocol calibration gases to challenge the CEMS and assess accuracy.

* * * * *

5. Performance Evaluation for CO, O₂, and HC CEMS

Carbon Monoxide (CO), Oxygen (O₂), and Hydrocarbon (HC) CEMS. An Absolute Calibration Audit (ACA) must be conducted quarterly, and a Relative Accuracy Test Audit (RATA) (if applicable, see sections 5.1 and 5.2 of this appendix) must be conducted annually. When a comprehensive

performance test is also required under § 63.1207 to document compliance with emission standards, the RATA must occur within 180 days prior to the start of the comprehensive performance test. The audits must be conducted as follows.

5.1 *Relative Accuracy Test Audit (RATA)*. This requirement applies to O₂ and CO CEMS. The RATA must be conducted at least annually. Conduct the RATA as described in the RA test procedure (or alternate procedures section) described in the applicable Performance Specifications. In addition, analyze the appropriate performance audit samples received from the EPA as described in the applicable sampling methods.

* * * * *

6. Other Requirements

* * * * *

6.3.5 *Use of Alternative Spans*. Owner or operators may request approval to use alternative spans and ranges to those specified. Alternate spans must be approved in writing in advance by the Administrator according to § 63.8(f). In considering approval of alternative spans and ranges, the Administrator will consider that measurements beyond the span will be

recorded as values at the maximum span for purposes of calculating rolling averages.

* * * * *

6.4.1 *Moisture Correction*. EPA Method 4 of appendix A–3 to part 60 of this chapter must be used to determine moisture content of the stack gases. Alternatively, you may petition the Administrator per § 63.8 to use either a moisture monitoring system or default moisture value(s).

* * * * *

6.6 Units of the Standards for the Purposes of Recording and Reporting Emissions.

Emissions must be recorded and reported after correcting for oxygen, temperature, and moisture. Emissions must be reported in metric, but may also be reported in the English system of units, at 7 percent oxygen, 20 °C, and on a dry basis.

6.7 Rounding and Significant Figures.

Emissions must be rounded to two significant figures. Rounding must be avoided prior to rounding for the reported value.

* * * * *

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Part V

The President

Executive Order 14407—Realigning United States Core Childhood Vaccine Recommendations With Best Practices From Peer, Developed Countries
Executive Order 14408—Removing Unnecessary and Counterproductive Restrictions on Access to Federal Lands

Presidential Documents

Title 3—

Executive Order 14407 of May 29, 2026

The President

Realigning United States Core Childhood Vaccine Recommendations With Best Practices From Peer, Developed Countries

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose and Policy.* Pursuant to the Presidential Memorandum of December 5, 2025 (Aligning United States Core Childhood Vaccine Recommendations with Best Practices from Peer, Developed Countries) (Memorandum), the Department of Health and Human Services (HHS) completed a scientific assessment that compared United States childhood immunization recommendations with those of peer nations, analyzed vaccine uptake and public trust, evaluated clinical and epidemiological evidence and knowledge gaps, and examined vaccine mandates (scientific assessment). The scientific assessment found that the United States currently recommends more childhood vaccines than any peer nation, including more than twice as many vaccine doses as some European nations, and identified a set of consensus vaccines that are consistently recommended in all peer countries. The scientific assessment also found that, instead of implementing vaccination mandates, most peer nations maintain high childhood vaccination rates through public trust and education.

My Administration is committed to ensuring that Americans are receiving the best scientifically supported medical advice in the world. Additionally, my Administration is committed to protecting religious liberty and parental authority. Therefore, it is the policy of the United States that the core childhood vaccine schedule should be aligned with scientific evidence and best practices from peer, developed countries while preserving access to vaccines currently available to Americans and that the Federal Government will continue to protect religious freedom and enforce all legal protections for parents.

Sec. 2. *Updating the Childhood Vaccine Schedule.* (a) The scientific assessment, with its proposed updates to the categories of the vaccine schedule, is acknowledged as a guiding resource for the Federal Government.

(b) The Centers for Disease Control and Prevention (CDC) and its Advisory Committee on Immunization Practices (ACIP) shall review the scientific assessment and the latest clinical data and, to the extent permitted by law, take any appropriate steps to update the United States childhood and adolescent vaccine schedule. ACIP's review should consider ways to provide maximum flexibility to parents and doctors through recommendations for timing and sequencing of the administration of routine immunizations.

(c) Each executive department and agency shall ensure all actions, regulations, funding, and coverage related to child and adolescent immunizations align with the schedule recommended by the ACIP and adopted by the CDC, including fulfilling all legal obligations with respect to parental authority, religious freedom, disability accommodations, and equal protection under the law. Specifically, consistent with the Memorandum and as recommended in the scientific assessment, all the immunizations that are in any category on the schedule recommended by the ACIP and adopted by the CDC should continue to be covered without cost sharing by private insurance and covered by Medicaid, the Children's Health Insurance Program, and the Vaccines for Children Program.

(d) The HHS Director of the Office of Intergovernmental and External Affairs shall ensure that State government and health officials are informed of the policies in this order and should ensure that the scientific assessment is available as a resource to inform their consideration of State vaccination laws.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

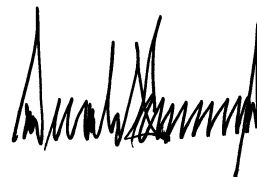
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(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 Health and Human Services.

A handwritten signature in black ink, appearing to be a stylized name with a long, sweeping horizontal stroke at the end.

THE WHITE HOUSE,
May 29, 2026.

Presidential Documents

Executive Order 14408 of May 29, 2026

Removing Unnecessary and Counterproductive Restrictions on Access to Federal Lands

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. My Administration has eliminated a record number of unnecessary regulations to further our Nation's prosperity and reduce regulatory burdens on industries critical to our national and economic security while keeping sufficient environmental protections in place. Executive Order 11644 of February 8, 1972 (Use of Off-Road Vehicles on the Public Lands), and Executive Order 11989 of May 24, 1977 (Off-Road Vehicles on Public Lands), are examples of this excessive regulation. Both were issued about 50 years ago when today's technology was not available to be paired with existing Federal statutes.

The Congress has enacted or amended a comprehensive set of statutory authorities to establish Federal land policy, including the National Historic Preservation Act, Public Law 89–665, 80 Stat. 915 (1966) (codified as amended at 54 U.S.C. 300101 *et seq.*), the National Environmental Policy Act, Public Law 91–190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. 4321 *et seq.*), the Endangered Species Act, Public Law 93–205, 87 Stat. 884 (1973) (codified as amended at 16 U.S.C. 1531 *et seq.*), and the Federal Land Policy and Management Act, Public Law 94–579, 90 Stat. 2743 (1976) (codified as amended at 43 U.S.C. 1701 *et seq.*). I have determined that those statutory authorities, together with executive department and agency (agency) specific land management authorities, provide the appropriate framework for managing off-road vehicle use on Federal lands without retaining the additional specific designation criteria imposed by Executive Order 11644 and Executive Order 11989. I have further determined that technological, operational, and land-management developments since the issuance of Executive Order 11644 and Executive Order 11989 support replacing those specific criteria with a framework grounded in applicable statutory authorities.

Executive Order 11644 and Executive Order 11989 direct agencies to promulgate regulations providing that, where off-road vehicle use is permitted on Federal lands, roads, and trails, such use designations must be made in accordance with ill-defined criteria purportedly intended to minimize resource impacts and conflicts between different users of Federal land. These criteria, which are not required by statute, are difficult for agencies to operationalize due to vagueness, and include “minimiz[ing] harassment of wildlife or significant disruption of wildlife habitats,” minimizing “conflicts between off-road vehicle use and other existing or proposed recreational uses . . . taking into account noise and other factors,” and ensuring that off-road vehicle use in given locations will not “adversely affect [the location's] natural, aesthetic, or scenic values.” These vague, subjective criteria often result in barriers to energy and timber production and utility maintenance, permit delays, and de facto bans on hiking and other forms of recreation that require accessing remote areas, all while doing little to benefit multiple use of Federal lands.

Access to Federal lands benefits all American citizens. Rescinding Executive Order 11644 and Executive Order 11989 would facilitate the replacement of current regulations with a system for off-road vehicle use designation that provides more access, recreational opportunities, and greater multiple

use benefits to the public. It would also restore balanced land management by eliminating ill-defined and arbitrary environmental and social standards, thereby ensuring that all public land users will be granted access on equal terms.

Sec. 2. *Rescinding Certain Prior Executive Orders.* Executive Order 11644 and Executive Order 11989 are hereby rescinded. The Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, the Board of Directors of the Tennessee Valley Authority, and the head of any other relevant agency shall initiate rulemakings to rescind or revise the regulations previously adopted to implement those Executive Orders.

Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

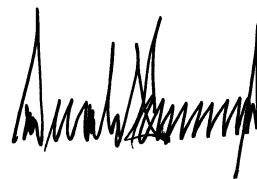
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(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 Interior.



THE WHITE HOUSE,
May 29, 2026.

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