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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–1329; Project Identifier AD–2025–01626–T; Amendment 39–23463; AD 2026–18–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–300F series airplanes. This AD was prompted by a report of a supplier notice of escapement documenting that some titanium cargo track crown fittings had suspect material certifications. This AD requires an X-ray fluorescence (XRF) spectrometer inspection to identify the material composition of the cargo track crown fittings or replacement of all cargo track crown fittings with new cargo track crown fittings, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–1329; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building

Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–1329.

FOR FURTHER INFORMATION CONTACT:

Taylor Stanley, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 407–852–7677; email: taylor.stanley@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–300F series airplanes. The NPRM was published in the **Federal Register** on February 17, 2026 (91 FR 7180). The NPRM was prompted by a report of a supplier notice of escapement documenting that some titanium cargo track crown fittings had suspect material certifications. The supplier did not have correct material records to make sure that type design specified material was used. In the NPRM, the FAA proposed to require an XRF spectrometer inspection to identify the material composition of the cargo track crown fittings or replacement of all cargo track crown fittings with new cargo track crown fittings, and applicable on-condition actions. The FAA is issuing this AD to address suspect material certifications on the titanium track crown fittings. The unsafe condition, if not addressed, could result in cargo track failure and could lead to uncommanded movement of the cargo pallet and subsequent damage to critical systems located in the sidewall or ceiling area of the main cargo compartment, along with inability of a principle structural element to sustain limit loads, which could

significantly affect controllability of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Boeing, FedEx Express (FedEx), and Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

The FAA received additional comments from Aviation Partners Boeing (APB) and The Foundation for Aviation Safety. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01920SE does not affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Identify the Root Cause and Preventive Action for Supply Chain Error

The Foundation for Aviation Safety requested that the FAA identify the root cause of the supply chain error, explain how it was discovered and why the original process was not effective in identifying erroneous materials, and clarify the preventive measures to ensure that the error does not happen again.

The FAA acknowledges the commenter's concerns. However, the questions provided are general in nature and are not specific to the unsafe condition addressed in this AD. Broader concerns regarding supply chain errors are outside the scope of this AD. The FAA refers the commentator to the “Background” paragraph for additional

information on the discovery of the supply chain error. The FAA did not change this AD as a result of this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM.

None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025. This material specifies procedures for an XRF spectrometer inspection to identify the material composition of the cargo track crown fittings and applicable on-condition actions. On-condition actions include replacing each affected cargo track crown fitting with a new cargo track crown fitting having Ti–6Al–4V alloy material. This material also

specifies, as an option, procedures for replacement of all cargo track crown fittings with new cargo track crown fittings having Ti–6Al–4V alloy material.

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

Costs of Compliance

The FAA estimates that this AD affects 43 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace all Cargo Track Crown Fittings with new Cargo Track Crown Fittings.	156 work-hours × \$85 per hour = \$13,260	\$63,540	\$76,800	Up to \$3,302,400.
XRF Spectrometer Inspection	92 work-hours × \$85 per hour = \$7,820	0	7,820	Up to \$336,260.

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of Cargo Track Crown Fittings	Up to 156 work-hours × \$85 per hour = \$13,260	Up to \$63,540 ..	Up to \$76,800.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–18–08 The Boeing Company: Amendment 39–23463; Docket No. FAA–2026–1329; Project Identifier AD–2025–01626–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2026.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 767–300F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025.

(2) Installation of Supplemental Type Certificate (STC) ST01920SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of a supplier notice of escapement documenting that some titanium cargo track crown fittings had suspect material certifications. The FAA is issuing this AD to address suspect material certifications on the titanium track crown fittings. The unsafe condition, if not addressed, could result in cargo track failure and could lead to uncommanded movement of the cargo pallet and subsequent damage to critical systems located in the sidewall or ceiling area of the main cargo compartment, along with inability of a principle structural element to sustain limit loads, which could significantly affect controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767–53A0337, dated October 17, 2025, which is referred to in Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025.

(h) Exceptions to Requirements Bulletin Specifications

Where the Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025, refer to the original issue date of Requirements Bulletin 767–53A0337 RB, this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the

person identified in paragraph (j)(1) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Additional Information

(1) For more information about this AD, contact Taylor Stanley, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 407–852–7677; email: taylor.stanley@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 767–53A0337 RB, dated October 17, 2025.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 2, 2026.

Brian Knaup,

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

[FR Doc. 2026–19083 Filed 9–16–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–3439; Project Identifier AD–2025–00463–T; Amendment 39–23462; AD 2026–18–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes. This AD was prompted by reports indicating cracks in the bear strap and stub frame at the forward galley door cutout. This AD requires inspections for existing repairs; an inspection for any crack of the fuselage skin, bear strap, and stub frame; repetitive inspections for any crack of the bear strap and stub frame; and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products. **DATES:** This AD is effective October 22, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2025–3439; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. FAA–2025–3439.

FOR FURTHER INFORMATION CONTACT: Luis Cortez-Muniz, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, IA 50319; phone: 206-231-3958; email: luis.a.cortez-muniz@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Boeing Model 737-8, 737-9, and 737-8200 airplanes. The NPRM was published in the **Federal Register** on November 25, 2025 (90 FR 53243). The NPRM was prompted by reports indicating that cracking was found in the bear strap and stub frame at the forward galley door cutout, from station (STA) 290 to STA 296 and between stringer S-8R and stringer S-9R. In the NPRM, the FAA proposed to require inspections for existing repairs; an inspection for any crack of the fuselage skin, bear strap, and stub frame; repetitive inspections for any crack of the bear strap and stub frame; and applicable on-condition actions. The FAA is issuing this AD to address any crack in the fuselage skin, bear strap, and stub frame at the forward galley door cutout from STA 290 to STA 296 and between stringer S-8R and stringer S-9R, before it reaches critical length. The unsafe condition, if not addressed, may result in the inability of a principal structural element to sustain limit load, which could adversely affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from four commenters, including Boeing, The Foundation for Aviation Safety, Southwest Airlines (Southwest), and United Airlines (United). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Explain How the Root Cause Is Addressed

The Foundation for Aviation Safety asked what the FAA and Boeing are doing to address the root cause of the defect. The commenter also asked if a structural defect is important enough to immediately ground an airplane after it is detected, why is the inspection for defects not accomplished long before the proposed compliance time.

The FAA is issuing this AD to address the unsafe condition on in-service airplanes. The required compliance times for the initial inspection and on-condition repetitive inspections and

repair were established to ensure any crack is detected and repaired before the crack reaches critical length with multiple opportunities for detection. The rulemaking timeline was based on Boeing 737 fleet findings, supporting analysis, and the severity of the effect on the airplane (*i.e.*, safety consequences) if cracking propagates beyond a critical length. The FAA determined that the required actions and compliance times provide an acceptable level of safety. In addition, Boeing is introducing changes to the manufacturing process that address the root cause of the unsafe condition on in-production airplanes. The FAA did not change this AD as a result of this comment.

Request To Correct Typographical Error in Requirements Bulletin

Boeing, Southwest, and United requested that flag note (a) of Figure 6 in Boeing Alert Requirements Bulletin 737-53A1420 RB, dated February 13, 2025, be corrected to refer to inspection of the stub frame instead of inspection of the bear strap. The commenters noted that there is a typographical error which states "bear strap" instead of "stub frame" in flag note (a) of Figure 6 and requested the FAA revise the proposed AD to add an exception to correct the error.

The FAA agrees. The FAA has added an exception in paragraph (h)(3) of this AD accordingly.

Request To Use Later Approved Revisions of Referenced Drawings

United requested to use later approved revisions of the drawings referenced in the Work Instructions, Table 1, footnote (c) of Boeing Alert Requirements Bulletin 737-53A1420 RB, dated February 13, 2025, without obtaining an alternative method of compliance (AMOC). United noted that the Picture Sheet Data List (PSDL) referenced in the work instructions direct operators to use Boeing PSDL 141A8370 revision C and Boeing Module Parts List (MPL) 141A8370-11. United noted that this approach restricts operators from utilizing the most current, FAA-approved revisions of the applicable PSDL and MPL data that may be effective for the aircraft configuration.

The FAA disagrees. The FAA may not refer to any document that does not yet exist in an AD. The specific drawing revisions are required as they include prescriptive instructions for the stub frame replacement when damage is found common to the stub frame. To ensure the configuration maintains an acceptable level of safety, the service

information does not currently allow for later approved revisions. However, if later approved revisions of the drawings provide an acceptable level of safety, operators may request approval of an AMOC under the provisions of paragraph (i) of this AD. The FAA did not change this AD as a result of this comment.

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737-53A1420 RB, dated February 13, 2025. This material specifies procedures for doing Option 1 or Option 2 actions as specified below, and applicable on-condition actions. On-condition actions include replacing the stub frame, doing alternative inspections, and doing a repair.

- Option 1—Perform initial external general visual inspection (GVI) of the fuselage skin and gap cover for any repair, initial internal GVI of the bear strap and stub frame for any repair, and repetitive internal high frequency eddy current (HFEC) inspections of the bear strap and stub frame for any crack.
- Option 2—Perform initial external GVI of the fuselage skin and gap cover for any repair, initial internal GVI of the stub frame for any repair, initial external HFEC inspection of the fuselage skin for any crack, initial external low frequency eddy current (LFEC) inspection of the bear strap for any crack, initial internal HFEC inspection of the stub frame for any crack, and repetitive internal HFEC inspections of the bear strap and stub frame for any crack.

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

Costs of Compliance

The FAA estimates that this AD affects 476 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Option 1—Initial inspections	31 work-hours × \$85 per hour = \$2,635	\$0	\$2,635	\$1,254,260.
Option 2—Initial inspections	7 work-hours × \$85 per hour = \$595	0	\$595	\$283,220.
Repetitive internal HFEC inspections of the bear strap and stub frame per Option 1 or Option 2.	29 work-hours × \$85 per hour = \$2,465 per inspection cycle.	0	\$2,465 per inspection cycle.	\$1,173,340 per inspection cycle.

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the stub frame	35 work-hours × \$85 per hour = \$2,975	\$1,359	\$4,334

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–18–07 The Boeing Company:

Amendment 39–23462; Docket No. FAA–2025–3439; Project Identifier AD–2025–00463–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1420 RB, dated February 13, 2025.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports indicating cracks in the bear strap and stub frame at the forward galley door cutout, from station (STA) 290 to STA 296 and between stringer S–8R and stringer S–9R. The FAA is issuing this AD to address any crack in the fuselage skin, bear strap, and stub frame at the forward galley door cutout from STA 290 to STA 296 and between stringer S–8R and stringer S–9R, before it reaches critical length. The unsafe condition, if not addressed, may result in the inability of a principal structural element to sustain limit load, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–53A1420 RB, dated February 13, 2025, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1420 RB, dated February 13, 2025.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1420, dated February 13, 2025, which is referred to in Boeing Alert Requirements Bulletin 737–53A1420 RB, dated February 13, 2025.

(h) Exceptions to Requirements Bulletin Specifications

(1) Where the Compliance Time columns of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–53A1420 RB, dated February 13, 2025, refer to the original issue date of Requirements Bulletin 737–53A1420 RB, this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 737–53A1420 RB, dated February 13, 2025, specifies contacting Boeing for repair instructions or for alternative

inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) Where flag note (a) of Figure 6 of the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737-53A1420 RB, dated February 13, 2025, specifies "Use the probe to scan internal surface of the bear strap at the specified area", this AD requires replacing that text with "Use the probe to scan the internal surface of the stub frame at the specified area".

(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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR-520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Additional Information

(1) For more information about this AD, contact Luis Cortez-Muniz, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3958; email: luis.a.cortez-muniz@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737-53A1420 RB, dated February 13, 2025.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

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

Issued on September 2, 2026.

Brian Knaup,

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

[FR Doc. 2026-19082 Filed 9-16-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-7201; Project Identifier MCAI-2025-01290-T; Amendment 39-23464; AD 2026-18-09]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330-243, A330-243F, A330-341, A330-342, and A330-343 airplanes. This AD was prompted by reports of cracked and broken restraint brackets of the anti-ice piccolo tube found during maintenance on certain nacelle inlet cowls. This AD requires, for certain affected parts, modification of the affected part, and for certain other affected parts, repetitive special detailed inspections (SDIs) for discrepancies and, depending on findings, modification of the affected part. This AD also prohibits a certain repair on any affected part and limits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2026-7201; or in person at

Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2026-7201.

FOR FURTHER INFORMATION CONTACT:

Anthony Decaro, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-5374; email: Anthony.D.Decaro@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330-243, A330-243F, A330-341, A330-342, and A330-343 airplanes. The NPRM was published in the **Federal Register** on June 29, 2026 (91 FR 39040). The NPRM was prompted by EASA AD 2025-0164, dated July 29, 2025 (EASA AD 2025-0164) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states cracked and broken restraint brackets of the anti-ice piccolo tube were reportedly found during maintenance on certain nacelle inlet cowls. The restraint brackets act as a precautionary measure to prevent disengagement of the thermal anti-ice spray ring from the thermal anti-ice feed pipe in specific conditions. This condition, if not detected and corrected, could lead to a thermal anti-ice feed pipe disengagement and decrease the effectiveness of the thermal anti-ice system, allowing ice build-up on the inlet lip skin, which could result in damage to the engine and reduced control of the airplane.

In the NPRM, the FAA proposed to require, for certain affected parts, modification of the affected part, and for certain other affected parts, repetitive SDIs for discrepancies and, depending on findings, modification of the affected part. The NPRM also proposed to prohibit a certain repair on any affected part and limit the installation of affected parts under certain conditions, as specified in EASA AD 2025–0164. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–7201.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

These products have been approved by the civil aviation authority of another

country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2025–0164 specifies procedures for modifying certain affected nacelle inlet cowls, and, for certain other affected parts, repetitive SDIs (*i.e.*, borescope inspections) of the nacelle inlet cowl (also known as the air inlet cowl) for discrepancies and, depending on findings, modification of the affected part, which terminates the

repetitive inspections. Discrepancies include the thermal anti-ice feed pipe that is fully or partially disengaged from the thermal anti-ice spray ring; and the thermal anti-ice feed pipe that is correctly engaged with the thermal anti-ice spray ring with one or both restraint brackets cracked, severed, or missing. EASA AD 2025–0164 also specifies that replacement of the affected part with a serviceable part as a method of compliance for the modification for that affected part. EASA AD 2025–0164 also prohibits repair FRSZ026 on any affected part and limits the installation of affected parts under certain conditions.

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

Costs of Compliance

The FAA estimates that this AD affects 70 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 5 work-hours × \$85 per hour = \$425	Up to \$11,673	Up to \$12,098	Up to \$846,860.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
4 work-hours × \$85 per hour = \$340	*\$0	\$340

* The FAA has received no definitive data on which to base the parts cost estimate for the optional replacement.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 5 work-hours × \$85 per hour = \$425	Up to \$11,673	Up to \$12,098.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–18–09 Airbus SAS: Amendment 39–23464; Docket No. FAA–2026–7201; Project Identifier MCAI–2025–01290–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342, and A330–343 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 71, Power Plant.

(e) Unsafe Condition

This AD was prompted by reports of cracked and broken restraint brackets of the anti-ice piccolo tube found during maintenance on affected parts. The FAA is issuing this AD to address the unsafe condition which, if not addressed, could result in a thermal anti-ice feed pipe disengagement and decrease the effectiveness of the thermal anti-ice system, allowing ice build-up on the inlet lip skin, which could result in damage to the engine and reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0164, dated July 29, 2025 (EASA AD 2025–0164).

(h) Exceptions to EASA AD 2025–0164

(1) Where EASA AD 2025–0164 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2025–0164 defines a serviceable part as a “Nacelle Inlet Cowl, eligible for installation in accordance with Airbus instructions, which is not an affected part”, for this AD replace that text with “Nacelle Inlet Cowl, eligible for installation, which is not an affected part”.

(3) Where paragraph (3) of EASA AD 2025–0164 specifies “any discrepancy, as identified in the SB, is found on an affected part”, this AD requires replacing that text with “any discrepancy is found on an affected part”.

(4) This AD does not adopt the “Remarks” section of EASA AD 2025–0164.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2025–0164 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (i) and (j)(2) of this AD, if any material contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are

not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Anthony Decaro, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5374; email: Anthony.D.Decaro@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025–0164, dated July 29, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 3, 2026.

Brian Knaup,

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

[FR Doc. 2026–19084 Filed 9–16–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–4658; Project Identifier MCAI–2026–00014–R; Amendment 39–23465; AD 2026–18–10]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 505 helicopters. This AD was prompted by reports that the identification plate affixed to certain tail cone assemblies contains an incorrect part number (P/N), which may not accurately convey the life limit. This AD requires verifying the tail cone assembly part number and, if necessary, replacing the incorrect tail cone assembly identification plate with a new tail cone assembly identification plate containing the correct P/N and updating the existing log book or equivalent record for the helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2026.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in this AD as of October 22, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2026-4658; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Transport Canada material identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, Canada; phone: (888) 663-3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca*; website: *tc.canada.ca/en/aviation*.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX

76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at *regulations.gov* under Docket No. FAA-2026-4658.

FOR FURTHER INFORMATION CONTACT:

Brande Ali-Turner, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294-7132; email: *brande.ali-turner@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bell Textron Canada Limited Model 505 helicopters. The NPRM was published in the **Federal Register** on June 22, 2026 (91 FR 37057). The NPRM was prompted by Transport Canada AD CF-2026-01, dated January 12, 2026 (Transport Canada AD CF-2026-01) (also referred to as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that there are reports that the identification plate affixed to some Bell 505 helicopter tail cone assemblies (P/N SLS-030-600-007 and P/N SLS-030-600-009) mistakenly contains an incorrect P/N. The MCAI further states that the tail cone assembly is subject to a life limit published in the Airworthiness Limitations Schedule, and if the P/N on the identification plate remains uncorrected, it could be incorrectly determined that the tail cone assembly has an unlimited airworthiness life. If the tail cone assembly is not replaced because of the incorrect identification plate, it could lead to fatigue cracking of the tailboom and loss of control of the helicopter.

In the NPRM, the FAA proposed to require verifying the tail cone assembly part number and, if necessary, replacing the incorrect tail cone assembly identification plate with a new tail cone assembly identification plate containing the correct P/N and updating the existing log book or equivalent record for the helicopter. The FAA is issuing

this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2026-4658.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Transport Canada AD CF-2026-01, which specifies procedures for verifying and, if necessary, replacing the tail cone assembly identification plate with a new plate marked with the correct part number. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD would affect 182 helicopters of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Verify tail cone assembly part number	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$15,470

The FAA estimates the following costs to do any replacement that will be

required based on the results of the inspection. The agency has no way of

determining the number of helicopters that might need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace tail cone assembly identification plate	2 work-hours × \$85 per hour = \$170	\$5	\$175
Update existing log book	1 work-hour × \$85 per hour = \$85	0	85

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–18–10 Bell Textron Canada Limited:
Amendment 39–23465; Docket No. FAA–2026–4658; Project Identifier MCAI–2026–00014–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 505 helicopters, certificated in any category, as identified in Transport Canada AD CF–2026–01, dated January 12, 2026 (Transport Canada AD CF–2026–01).

(d) Subject

Joint Aircraft System Component (JASC) Code 5302, Rotorcraft tail boom.

(e) Unsafe Condition

This AD was prompted by reports that the identification plate affixed to certain tail cone assemblies contains an incorrect part number. The FAA is issuing this AD to ensure proper identification of the tail cone assembly and compliance with its approved life limit. The unsafe condition, if not addressed, could lead to non-replacement of the tail cone assembly within the life limit, which could result in possible fatigue cracking of the tailboom and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2026–01.

(h) Exceptions to Transport Canada AD CF–2026–01

(1) Where Transport Canada AD CF–2026–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2026–01 requires compliance in terms of air time, this AD requires using hours time-in-service.

(3) Where the material referenced in Transport Canada AD CF–2026–01 specifies scrapping or destroying certain parts, this AD requires removing those parts from service.

(4) Where the material referenced in Transport Canada AD CF–2026–01 specifies making an entry in the helicopter's log book and historical service records, this AD requires making an entry of the tail cone assembly part number and serial number of the replacement identification plate in the existing helicopter log book or equivalent document but you are not required to make an entry of compliance with the material.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

For more information about this AD, contact Brande Ali-Turner, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7132; email: brande.ali-turner@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2026–01, dated January 12, 2026.

(ii) [Reserved]

(3) For Transport Canada material identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, Canada; phone: (888) 663–3639; email:

TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may view this material on the Transport Canada website at *tc.canada.ca/en/aviation*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on September 10, 2026.

Hollister B. Thorson,

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

[FR Doc. 2026-19052 Filed 9-16-26; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

[Docket No. CPSC-2026-0298]

RIN 3041-AE17

Revocation of Obsolete Rules Regarding Infant Bouncer Seats and Stationary Activity Centers

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of direct final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is withdrawing a direct final rule that would remove two obsolete rules concerning infant bouncer seats and stationary activity centers that was published in the **Federal Register** on July 22, 2026, because the Commission received a significant adverse comment.

DATES: The direct final rule published on July 22, 2026 (91 FR 45992) is withdrawn effective September 17, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Taxier, Project Manager, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2211; email: *dtaxier@cpsc.gov*.

SUPPLEMENTARY INFORMATION: On July 22, 2026, the Commission published a direct final rule in the **Federal Register** that would remove two obsolete rules concerning infant bouncer seats and stationary activity centers because those products are subject to newer, more comprehensive mandatory safety standards issued by the Commission. 91

FR 45992. The Commission indicated in the direct final rule that if it received a significant adverse comment, the Commission would withdraw any portion of the direct final rule related to such a comment. The Commission received a significant adverse comment concerning the direct final rule and thus is withdrawing the direct final rule.¹ The Commission will consider the significant adverse comment and assess the appropriate manner in which to proceed in this matter.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2026-19065 Filed 9-16-26; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA-2025-P-5560]

Medical Devices; Exemption From Premarket Notification: Radiology Computer-Aided Detection and/or Diagnosis Devices and Computer-Aided Triage and Notification Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order setting forth its final determination regarding a partial exemption from the premarket notification requirements for radiology computer-aided detection and/or diagnosis devices and computer-aided triage and notification devices that was the subject of a notice published in the **Federal Register** of December 29, 2025. That notice announced FDA's receipt of a petition that requested exemption from the premarket notification requirements for the following generic device types when certain conditions described in the petition were met: radiological computer-assisted diagnostic software for lesions suspicious of cancer; medical image analyzers; radiological computer aided triage and notification software; and radiological computer-assisted detection and diagnosis software. FDA denied the petition in a response issued to the petitioner on April 1, 2026. FDA is publishing this order in accordance

¹ The Commission voted 3-0 to publish this notification.

with procedures established by the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: This order is effective September 17, 2026.

FOR FURTHER INFORMATION CONTACT:

Gugandeep Kaur, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5504, Silver Spring, MD 20993-0002, 240-402-9534.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The FD&C Act, as amended, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three classes of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three classes of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Section 513(a)(1) of the FD&C Act defines the three classes of devices. Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under section 501, 502, 510, 516, 518, 519, or 520 (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, or 360j) or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness of the device; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act).

Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including the issuance of performance standards, post-market surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions FDA (the Agency or we) deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act).

Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Under section 510(k) of the FD&C Act and FDA's implementing regulations in part 807, subpart E (21 CFR part 807, subpart E), persons who are required to register and who propose to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use are required to submit a premarket notification (510(k)) to FDA. The device may not be marketed until FDA finds it "substantially equivalent" within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval. A premarket notification is not required for devices in certain situations, such as when they have been exempted from that requirement under section 510(m) of the FD&C Act.

The 21st Century Cures Act (Pub. L. 114–255) (Cures Act) was signed into law on December 13, 2016. Section 3054 of the Cures Act amended section 510(m) of the FD&C Act. As amended, section 510(m)(1) of the FD&C Act requires that within 90 days of the date of enactment of the Cures Act, and at least once every 5 years thereafter (as FDA determines appropriate), FDA publish in the **Federal Register** a notice containing a list of each type of class II device that FDA determines no longer requires a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. After providing at least a 60-day public comment period, FDA must then publish in the **Federal Register** a list representing the final determination with respect to the devices contained in the list under section 510(m)(1)(B). Additionally, section 510(m)(2) of the FD&C Act provides that FDA may exempt a class II device from the requirement to submit a report under section 510(k) of the FD&C Act, upon its own initiative or a petition of an interested person, if FDA determines that a report under section 510(k) is not necessary to assure the safety and effectiveness of the device. FDA must publish in the **Federal Register** a notice of its intent to exempt the device, or of the petition, and provide a 60-calendar-day period for public comment. If FDA

fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted. In addition, within 120 days after the issuance of the notice, FDA must publish an order in the **Federal Register** that sets forth its final determination regarding the exemption of the device that was the subject of the notice.

II. Factors FDA Generally Considers for Exemption

There are several factors FDA may consider to determine whether a 510(k) is not necessary to assure the safety and effectiveness of a class II device. These factors are discussed in the **Federal Register** of January 21, 1998 (63 FR 3142) and subsequently in the guidance the Agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff" (Class II 510(k) Exemption Guidance) (available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/procedures-class-ii-device-exemptions-premarket-notification-guidance-industry-and-cdrh-staff>).

Accordingly, FDA generally considers the following factors to determine whether a report under section 510(k) is necessary or if an exemption would be appropriate for class II devices: (1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device; (2) characteristics of the device necessary for its safe and effective performance are well established; (3) changes in the device that could affect safety and effectiveness will either (a) be readily detectable by users by visual examination or other means such as routine testing, before causing harm, or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (4) any changes to the device would not be likely to result in a change in the device's classification.

FDA may also consider that, even when exempting devices from the 510(k) requirements, these devices would still be subject to general limitations of exemptions. Specifically, even if a device is exempted from premarket notification requirements, a manufacturer of the device will still be required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into interstate commerce for commercial distribution when the device exceeds any of the limitations of exemptions described in 21 CFR parts 862–892, in the section of each part entitled "Limitations of exemptions from section

510(k) of the Federal Food, Drug, and Cosmetic Act (the act)" (see, e.g., 21 CFR 892.9).

In addition to the general limitations, partial limitations may limit an exemption from premarket notification requirements to specific devices within a device type when the Agency determines that the factors described in the **Federal Register** notice (63 FR 3142) and Class II 510(k) Exemption Guidance do not weigh in favor of exemption for all devices within a generic type of device. Where partial limitations exist, FDA has determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness for devices that fall outside of the limitations.

III. Petition

On October 22, 2025, FDA received a petition requesting partial exemption from 510(k) requirements for "radiology Computer-Aided Detection and/or Diagnosis (CAD) and Computer-Aided Triage and Notification (CADt) devices" (the Subject CAD and CADt Devices) from Nancy Stade, J.D., of Rubrum Advising, LLC, 404 Pembroke Rd., Bala Cynwyd, PA 19004, on behalf of Harrison.ai (see Docket No. FDA–2025–P–5560). Specifically, the petition sought partial exemption for the following devices:

- Radiological computer-assisted diagnostic software for lesions suspicious of cancer, classified under § 892.2060 (21 CFR 892.2060), product code POK (CADx).
- Medical image analyzer, classified under § 892.2070 (21 CFR 892.2070), product code MYN (CADE).
- Radiological computer aided triage and notification software, classified under § 892.2080 (21 CFR 892.2080), product codes QAS and QFM (CADt).
- Radiological computer-assisted detection and diagnosis software, classified under § 892.2090 (21 CFR 892.2090), product codes QBS and QDQ (CADE/x).

All these devices currently require premarket notification under section 510(k) of the FD&C Act.

The petition requested exemption from the premarket notification requirements for the Subject CAD and CADt Devices when:

- The manufacturer had previously obtained a 510(k);
- For devices under § 892.2080 (the Subject CADt Devices), the manufacturer had at least one clearance under the same classification regulation;
- For devices under §§ 892.2060, 892.2070, or 892.2090 (the Subject CAD Devices), the manufacturer had at least

one clearance under any of those same three classification regulations;

- The manufacturer implemented “a robust post-market plan, transparency, and training measures” as described in the petition; and
- All existing “special controls, quality systems, establishment registration, and device listing requirements” remained in force.

On December 29, 2025, FDA published a notice of the petition in the **Federal Register** (90 FR 60730) and requested comments on it, in accordance with section 510(m)(2) of the FD&C Act. The comment period closed on February 27, 2026.

FDA considered the information available to the Agency, including comments from the public docket for the petition and **Federal Register** notice, and determined not to exempt devices classified under §§ 892.2060, 892.2070, 892.2080, and 892.2090 from the 510(k) requirements subject to the partial limitations of exemption proposed in the petition.¹ Accordingly, FDA responded to the petition by letter dated April 1, 2026, denying the petition within the 180-day timeframe under section 510(m)(2) of the FD&C Act.

IV. Order

As discussed in the petition response issued to the petitioner on April 1, 2026, based on FDA’s review of the petition’s proposed partial exemption, and in consideration of the comments submitted to the docket and FDA’s own assessment of each of the four factors for exemption described in the **Federal Register** notice (63 FR 3142) and the Class II 510(k) Exemption Guidance, FDA determined that the information presented in the petition does not demonstrate that premarket notification is not necessary to assure the safety and effectiveness of the Subject CAD and CADt Devices that may be covered by the petition’s proposed partial exemption. Therefore, FDA denied the petition request for partial exemption from premarket notification requirements for the Subject CAD and CADt Devices and is issuing this order setting forth the final determination. FDA’s response to the petition can be found in Docket No. FDA–2025–P–5560, available at <https://www.regulations.gov/docket/FDA-2025-P-5560>.

¹ In considering the petition and comments submitted to the docket, FDA has assumed that all elements of petitioner’s proposal were partial limitations on exemption that FDA may consider under section 510(m)(2) of the FD&C Act and we refer to them as partial limitations on exemption throughout this order.

Manufacturers of the Subject CAD and CADt Devices must continue to submit and receive FDA clearance of a 510(k) submission before marketing their devices, as well as comply with all other applicable requirements under the FD&C Act.

Although FDA determined that the proposal in the petition did not support a partial exemption from 510(k) requirements under section 510(m)(2) of the FD&C Act, the Agency has a longstanding commitment to develop and apply innovative approaches to the regulation of medical device software and other digital health devices to ensure their safety and effectiveness consistent with least burdensome principles. FDA supports the continued consideration of innovative and least burdensome approaches that may accelerate the availability of safe and effective devices.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final administrative order refers to previously approved collections of information found in FDA regulations. 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 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 820 (Quality Management System Regulation) have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 (Investigational Device Exemptions) have been approved under OMB control number 0910–0078; the collections of information in part 807, subpart E (Premarket Notification Procedures), have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 822 (Postmarket Surveillance) have been approved under OMB control number 0910–0449; and the collections of information under 21 CFR part 801 (Device Labeling) have been approved under OMB control number 0910–0485.

VII. References

The following reference is on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and is available for viewing by interested

persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <https://www.regulations.gov>. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. FDA Guidance, “Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff,” February 19, 1998, available at <https://www.fda.gov/media/72685/download>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–19074 Filed 9–16–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2026–1161]

RIN 1625–AA08

Special Local Regulation; Maumee River, Toledo, OH

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) for certain navigable waters of the Maumee River near Toledo, OH. This action is necessary to provide for the safety of life on these navigable waters during the Glass City Regatta occurring on September 19, 2026. This regulation prohibits persons and vessels from entering the regulated area unless specifically authorized by the Captain of the Port, Sector Detroit or their designated representative.

DATES: This rule is effective from 7 a.m. through 4 p.m. on September 19, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–1161.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact MST2 Jacob Allen, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Toledo; (419) 418–6050, D09-SMB-MSUToledo-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
 SLR Special Local Regulation
 U.S.C. United States Code

II. Background and Authority

The Coast Guard received a Marine Event Application under 33 CFR 100.15 from the Toledo Rowing Foundation to host a rowing regatta. The event will be held from 7 a.m. through 4 p.m. on September 19, 2026, in Toledo, OH. The event will include approximately 30 rowing vessels.

The Captain of the Port Detroit (COTP) is issuing this Special Local Regulation (SLR) under the authority in 46 U.S.C. 70041. The COTP has determined that potential hazards associated with the rowing regatta include the participants rowing within the navigable channel, as well as the possibility that participants rowing within approaches to local public and private boat facilities might collide with or otherwise interfere with boaters near those facilities. The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

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. On August 31, 2026, the Coast Guard became aware that the planned racecourse differed from the historical course used for this event, described in 33 CFR 100.911, Table 1, Event 14. We must establish this SLR by September 19, 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 reasons, 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 temporary SLR from 7 a.m. through 4 p.m. on September 19, 2026. The special local regulation will cover all navigable waters of the Maumee River from river mile 6.0 to river mile 3.2. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or their designated representative.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The regulatory flexibility 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 special local regulation. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

List of Subjects in 33 CFR Part 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T999–1161 to read as follows:

§ 100.T999–1161 Special Local Regulation; Maumee River, Toledo, OH.

(a) *Location*. This special local regulation applies to the following regulated area: All waters of the Maumee River, from surface to bottom, beginning at river mile 6.0, south of the Norfolk Southern Railroad Bridge, to river mile 3.2, northeast of the Craig Memorial Bridge.

(b) *Definitions*. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Detroit (COTP) in the enforcement of the regulated area. *Participant* means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF-FM channel 16. Those in the regulated area 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 7 a.m. to 4 p.m. on September 19, 2026.

Brett F. McCall,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Detroit.

[FR Doc. 2026-19056 Filed 9-16-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2026-1146]

RIN 1625-AA00

Safety Zone; Key West Main Ship Channel, and Fleming Key Cut, Key West, FL

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones to support U.S. military training operations. Zone 1 will encompass the navigable waters of Fleming Key Cut within a 500-foot radius of surface support vessels. Zone 2 will encompass the navigable waters of the Key West Main Ship Channel within a 500-foot radius of surface support vessels. The zones are needed to protect personnel, vessels, and the marine environment from hazards associated with military training operations. Entry into either zone is prohibited unless specifically authorized by the Captain of the Port, Sector Key West, or a designated representative.

DATES: This rule is effective without actual notice from September 17, 2026, through October 14, 2026. For the purposes of enforcement, actual notice will be used from September 10, 2026, until September 17, 2026.

ADDRESSES: To view available documents go to <https://>

www.regulations.gov and search for USCG-2026-1146.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact MSTC Mathew Mason, Sector Key West Waterways Management Division, U.S. Coast Guard; telephone 305-292-8823, or email Mathew.R.Mason@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 U.S. military training operations will be conducted in and around the Port of Key West. The training operations will be held over multiple dates in September and October of 2026. The training operations will be conducted along the Key West Main Ship Channel, Man of War Harbor and around Fleming Key. The Captain of the Port (COTP) Key West has determined that potential hazards associated with the training operations are a safety concern for anyone within a 500-foot radius of the surface support vessels.

Therefore, the COTP is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zones.

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. The Coast Guard was notified of this event on August 19, 2026, but we must establish this safety zone by September 10, 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 two safety zones: Zone 1 and Zone 2. Zone 1 will be enforced daily from 8:00 a.m. until 11:59 p.m. on September 10-16, 2026, and from October 8-14, 2026. Zone 1

will encompass all navigable waters within a 500-foot radius of surface support vessels on Fleming Key Cut. Zone 2 will be enforced daily from 8:00 a.m. until 11:59 p.m. on September 15-October 13, 2026. Zone 2 will encompass all navigable waters within a 500-foot radius of surface support vessels on the Key West Main Ship Channel. Vessels and persons will not be allowed to enter either zone during this time, unless authorized by the Captain of the Port, or their designated representative.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The regulatory flexibility 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; DHS Delegation No. 00170.1, Revision No. 01.4.

- 2. Add § 165.T07–1146 to read as follows:

§ 165.T07–1146 Safety Zone; Key West Main Ship Channel, Key West, FL.

(a) *Location.* The following areas are designated safety zones:

(1) *Zone 1.* All navigable waters of the Key West Main Ship Channel from surface to bottom extending outward 500 feet in all directions from surface support vessels.

(2) *Zone 2.* All navigable waters of the Fleming Key Cut from surface to bottom extending outward 500 feet in all directions from the surface support vessels.

(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 Key West (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 zones 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 (305) 340–7992. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* Zone 1 described in paragraph (a)(1) of this section will be enforced daily from 8:00 a.m. until 11:59 p.m. on September 10–16, 2026, and daily from 8:00 a.m. until 11:59 p.m. on October 8–14, 2026. Zone 2 described in paragraph (a)(2) of this section will be enforced from 8:00 a.m. until 11:59 p.m. on September 15–October 13, 2026.

Joshua M. Empen,

Captain, U.S. Coast Guard, Captain of the Port Sector Key West.

[FR Doc. 2026–19060 Filed 9–16–26; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register

Vol. 91, No. 179

Thursday, September 17, 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-2026-8816; Project Identifier AD-2026-00605-E]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney 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 all Pratt & Whitney (PW) Model PW1519G, PW1521G, PW1521GA, PW1521G-3, PW1524G, PW1524G-3, PW1525G, PW1525G-3, PW1919G, PW1919G-RC, PW1921G, PW1921G-RC, PW1922G, PW1923G, and PW1923G-A engines with a certain high-pressure compressor (HPC) module installed. This proposed AD was prompted by six reports of clashing found on either the HPC 2nd stage rotor or 3rd stage rotor caused by contact with the corresponding HPC variable stator vanes (VSV). This proposed AD would require initial and repetitive borescope inspections (BSIs) of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surfaces for evidence of wear, scratching, or contact with the corresponding HPC VSV inner locating ring and, depending on the results, removal from service and replacement. This proposed AD would also require replacement of the HPC VSV bushing set as terminating action to the initial and repetitive BSIs of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surfaces. 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 October 19, 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](https://www.regulations.gov). Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2026-8816; 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.

Material Incorporated by Reference:

- For PW material identified in this AD, contact PW, 400 Main Street, East Hartford, CT 06118; phone: (860) 565-0140; email: help24@prattwhitney.com; website: connect.prattwhitney.com.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

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-2026-8816; Project Identifier AD-2026-00605-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](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Carol Nguyen, 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 six reports from the manufacturer of shop finds of clashing on either the HPC 2nd stage rotor or HPC 3rd stage rotor caused by wear on the HPC VSV bushing set. A manufacturer investigation revealed that the wear on the HPC VSV bushing set allowed the vane to rock forward, which caused the HPC variable vane inner locating ring to contact the HPC rotor rear rim. This contact can lead to failure of the HPC 1st stage, 2nd stage, and 3rd stage rotors. This condition, if not addressed, could result in uncontained part release, damage to the engine, damage to the airplane, and loss of control of 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.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed PW Alert Service Bulletin (ASB) PW1000G–A–72–00–0200–00B–930A–D, Issue No: 001, dated July 13, 2026; and PW ASB PW1000G–A–72–00–0248–00A–930A–D, Issue No: 001, dated July 13, 2026. This material specifies procedures for performing initial and repetitive BSIs of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surfaces for signs of wear, scratching, or contact with the HPC VSV inner locating ring. This material also specifies the serial numbers for affected HPC modules. This material is

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

Proposed AD Requirements in This NPRM

This proposed AD would require performing initial and repetitive BSIs of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surfaces for evidence of wear, scratching, or contact with the corresponding HPC VSV inner locating ring and, depending on the results, removal from service and replacement. This proposed AD would also require replacement of the HPC VSV bushing set as terminating action to the initial and repetitive BSIs of the HPC 1st stage,

2nd stage, and 3rd stage rotor rear rim surfaces.

Interim Action

The FAA considers that this proposed AD would be an interim action. The manufacturer is currently developing additional mitigations that will address the unsafe condition identified in this AD. Once this is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 215 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSIs of HPC 1st stage, 2nd stage, and 3rd stage rotor ...	3 work-hours × \$85 per hour = \$255	\$0	\$255	\$54,825
Replacement of HPC VSV bushing set	1 work-hour × \$85 per hour = \$85	20,300	20,385	4,382,775

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspection. The agency has no way of determining the

number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of HPC 1st stage rotor	30 work-hours × \$85 per hour = \$2,550	\$313,500	\$316,050
Replacement of HPC 2nd stage rotor	30 work-hours × \$85 per hour = \$2,550	299,000	301,550
Replacement of HPC 3rd stage rotor	30 work-hours × \$85 per hour = \$2,550	256,400	258,950

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:

Pratt & Whitney: Docket No. FAA–2026–8816; Project Identifier AD–2026–00605–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 19, 2026.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all Pratt & Whitney (PW) Model PW1519G, PW1521G, PW1521GA, PW1521G-3, PW1524G, PW1524G-3, PW1525G, PW1525G-3, PW1919G, PW1919G-RC, PW1921G, PW1921G-RC, PW1922G, PW1923G, and PW1923G-A engines that have a high-pressure compressor (HPC) module installed with a serial number listed in Table 1 of PW Alert Service Bulletin (ASB) PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001, dated July 13, 2026 (PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001); or Table 1 of PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001, dated July 13, 2026 (PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001).

(2) This AD does not apply to engines that have incorporated PW Service Bulletin PW1000G-A-72-00-0224-00A-930A-D or PW Service Bulletin PW1000G-A-72-00-0170-00B-930A-D, as applicable.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by six reports of clashing found on either the HPC 2nd stage rotor or 3rd stage rotor caused by contact with the HPC variable stator vanes (VSV). The FAA is issuing this AD to prevent failure of the HPC 1st stage, 2nd stage, and 3rd stage rotors. The unsafe condition, if not addressed, could result in uncontained part release, damage to the engine, damage to the airplane, and loss of control of 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) Model “PW1500G” engines are PW Model PW1519G, PW1521G, PW1521GA, PW1521G-3, PW1524G, PW1524G-3, PW1525G, and PW1525G-3 engines.

(2) Model “PW1900G” engines are PW Model PW1919G, PW1919G-RC, PW1921G, PW1921G-RC, PW1922G, PW1923G, and PW1923G-A engines.

(3) An “HPC front case split flange separation” is when the HPC front case horizontal flange is separated.

(4) An “HPC VSV bushing set” is comprised of sleeve bearings having part numbers (P/Ns) 30G1934, 30G1935, and 30G1936; and thrust washer bearings having P/Ns 30G1938, 30G1939, and 30G1940.

(5) “Parts eligible for installation” are comprised of sleeve bearings having P/Ns 30G6496, 30G6497, and 30G6498; and thrust washer bearings having P/Ns 30G6499, 30G6500, and 30G6503; or later approved P/Ns.

Note 1 to paragraph (g)(5): An HPC case with P/N 30G6509 has installed sleeve bearings with P/Ns 30G6496, 30G6497, and 30G6498.

(6) An “HPC 1st stage, 2nd stage, or 3rd stage rotor eligible for installation” is any HPC 1st stage, 2nd stage, or 3rd stage rotor that was not removed from service in accordance with the requirements of this AD.

(h) Required Actions

(1) Before accumulating 8,000 flight hours (FH) or within 1,000 FH after the effective date of this AD, whichever occurs later, perform an initial borescope inspection (BSI) of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surfaces for evidence of circumferential wear, scratching, or damage that shows previous contact with the corresponding HPC VSV inner locating ring in accordance with the applicable ASB listed in table 1 to paragraph (h)(1) of this AD, as applicable to engine model.

TABLE 1 TO PARAGRAPH (h)(1)—APPLICABLE ASBs

[Use this table 1 to determine the applicable ASB to perform the actions required by paragraphs (h)(1) and (2) of this AD.]

Part	Engine model	Applicable service bulletin for engines installed on aircraft	Applicable service bulletin for engines not installed on aircraft
HPC 1st stage rotor	PW1500G	Accomplishment Instructions, For Engines Installed On Aircraft, paragraph B., step (5), of PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001.	Accomplishment Instructions, For Engines Not Installed On Aircraft, paragraph A., step (5), of PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001.
HPC 1st stage rotor	PW1900G	Accomplishment Instructions, For Engines Installed On Aircraft, paragraph B., step (5), of PW ASB PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001.	Accomplishment Instructions, For Engines Not Installed On Aircraft, paragraph A., step (5), of PW ASB PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001.
HPC 2nd stage rotor ...	PW1500G	Accomplishment Instructions, For Engines Installed On Aircraft, paragraph C., step (5), of PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001.	Accomplishment Instructions, For Engines Not Installed On Aircraft, paragraph B., step (5), of PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001.
HPC 2nd stage rotor ...	PW1900G	Accomplishment Instructions, For Engines Installed On Aircraft, paragraph C., step (5), of PW ASB PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001.	Accomplishment Instructions, For Engines Not Installed On Aircraft, paragraph B., step (5), of PW ASB PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001.
HPC 3rd stage rotor	PW1500G	Accomplishment Instructions, For Engines Installed On Aircraft, paragraph D., step (5), of PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001.	Accomplishment Instructions, For Engines Not Installed On Aircraft, paragraph C., step (5), of PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001.
HPC 3rd stage rotor	PW1900G	Accomplishment Instructions, For Engines Installed On Aircraft, paragraph D., step (5), of PW ASB PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001.	Accomplishment Instructions, For Engines Not Installed On Aircraft, paragraph C., step (5), of PW ASB PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001.

(2) Thereafter, at intervals not to exceed 1,000 FH since the last BSI, perform repetitive BSIs of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surfaces for circumferential wear, scratching, or damage that shows previous contact with the corresponding HPC VSV inner locating ring in accordance with the applicable ASB listed in table 1 to paragraph (h)(1) of this AD, as applicable to the engine model.

(3) If, during any BSI required by paragraph (h)(1) or (2) of this AD, evidence of circumferential wear, scratching, or damage that shows previous contact with the corresponding HPC VSV inner locating ring is discovered on the HPC 1st stage, 2nd stage,

or 3rd stage rotor rear rim surface, before further flight, remove each damaged part from service and replace with an HPC 1st stage, 2nd stage, or 3rd stage rotor eligible for installation.

(4) At the next HPC front case split flange separation after the effective date of this AD, replace the HPC VSV bushing set with parts eligible for installation.

NOTE 2 TO PARAGRAPH (H)(4): Guidance for performing the replacement of the HPC VSV bushing set may be found in PW Service Bulletin PW1000G-A-72-00-0224-00A-930A-D, Issue No: 003, dated April 25, 2025, for PW Model PW1500G engines; and PW Service Bulletin PW1000G-A-72-00-0170-

00B-930A-D, Issue No: 004, dated July 25, 2025, for PW Model PW1900G engines.

(i) Terminating Action

Replacing the HPC VSV bushing set in accordance with paragraph (h)(4) of this AD constitutes terminating action for the initial and repetitive BSIs of the HPC 1st stage, 2nd stage, and 3rd stage rotor rear rim surface required by paragraphs (h)(1) and (2) of this AD.

(j) No Reporting Requirement

Although PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001, and PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001, specify to submit certain

information to the manufacturer, including capturing photos and videos, this AD does not require those actions.

(k) Alternative Methods of Compliance (AMOCs)

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 (l)(1) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Additional Information

(1) For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7655; email: carol.nguyen@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (m)(4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Pratt & Whitney (PW) Alert Service Bulletin (ASB) PW1000G-A-72-00-0200-00B-930A-D, Issue No: 001, dated July 13, 2026.

(ii) PW ASB PW1000G-A-72-00-0248-00A-930A-D, Issue No: 001, dated July 13, 2026.

(3) For PW material identified in this AD, contact PW, 400 Main Street, East Hartford, CT 06118; phone: (860) 565-0140; email: help24@prattwhitney.com; website: connect.prattwhitney.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on September 15, 2026.

Brian Knaup,

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

[FR Doc. 2026-19094 Filed 9-16-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-8813; Project Identifier MCAI-2026-00229-T]

RIN 2120-AA64

Airworthiness Directives; ATR-GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all ATR-GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This proposed AD was prompted by reports of uncommanded nose landing gear (NLG) retraction. This proposed AD would require a leakage test of certain landing gear selector valves (LGSVs) and replacement, as applicable. This proposed AD would also limit the installation of affected parts under certain conditions.

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 November 2, 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-2026-8813; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material

identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at regulations.gov under Docket No. FAA-2026-8813.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

FOR FURTHER INFORMATION CONTACT:

Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@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-2026-8813; Project Identifier MCAI-2026-00229-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, 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 Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2026-0046, dated March 6, 2026; corrected March 9, 2026 (EASA AD 2026-0046) (also referred to as the MCAI), to correct an unsafe condition for certain ATR-GIE Avions de Transport Régional Airplanes Model ATR42-200, -300, -320, -400 and -500 airplanes; and Model ATR72-101, -102, -201, -202, -211, -212 and -212A airplanes. Model ATR42-400 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that occurrences of uncommanded NLG retraction were reported. Preliminary investigation determined that excessive internal leakage within the LGSV may result in an inadvertent gear retraction under specific configurations. Further investigation is still ongoing to determine the root cause of the reported events. This condition, if not addressed, could lead to loss of landing gear and airplane control during ground operations or immediately after touchdown, possibly resulting in damage to the airplane or injury to the occupants.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2026-8813.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2026-0046 specifies procedures for a one-time leakage test of certain LGSVs and replacement with a serviceable part, as applicable. EASA AD 2026-0046 also limits the installation of affected parts under certain conditions and requires reporting the results of the leakage test.

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

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2026-0046 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA)

ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2026-0046 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2026-0046 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2026-0046 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2026-0046. Material required by EASA AD 2026-0046 for compliance will be available at *regulations.gov* under Docket No. FAA-2026-8813 after the FAA final rule is published.

Interim Action

The FAA considers that this proposed AD would be an interim action. The reporting required by this AD will enable better insight into the cause of the leakage. If a final action to correct the unsafe condition is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × \$85 per hour = \$170	\$0	\$170	\$5,440

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × \$85 per hour = \$255	\$11,900	\$12,155

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

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:

ATR—GIE Avions de Transport Régional:
Docket No. FAA-2026-8813; Project Identifier MCAI-2026-00229-T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 2, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42-200, -300, -320, and -500 airplanes; and Model ATR72-101, -102, -201, -202, -211, -212, and -212A airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2026-0046, dated March 6, 2026; corrected March 9, 2026 (EASA AD 2026-0046).

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports of occurrences of uncommanded nose landing gear (NLG) retraction. Preliminary investigation determined that excessive

internal leakage within the landing gear selector valve (LGSV) may result in an inadvertent gear retraction under specific configurations. The FAA is issuing this AD to address internal leakage within the LGSV. The unsafe condition, if not addressed, could lead to loss of landing gear and airplane control during ground operations or immediately after touchdown, possibly resulting in damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2026-0046.

(h) Exceptions to EASA AD 2026-0046

(1) Where EASA AD 2026-0046 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2026-0046 defines a serviceable part as "Any LGSV eligible for installation in accordance with approved ATR instructions, which is not an affected part", this AD requires replacing that text with "Any LGSV eligible for installation, which is not an affected part".

(3) Where paragraph (3) of EASA AD 2026-0046 specifies "any leakage out of tolerance is detected, as defined in the AOM", this AD requires replacing that text with "any leakage out of tolerance is detected (*i.e.*, fail criterion), as identified in Appendix 2 of the AOM".

(4) This AD does not adopt the "Remarks" section of EASA AD 2026-0046.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2026-0046, dated March 6, 2026; corrected March 9, 2026.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

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

Issued on September 14, 2026.

Hollister B. Thorson,

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

[FR Doc. 2026-19089 Filed 9-16-26; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2026-8812; Project Identifier MCAI-2025-01723-T]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 B4-600, B4-600R, and F4-600R series airplanes; and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes). This proposed AD was prompted by a determination that new or more

restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. 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 November 2, 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-2026-8812; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at regulations.gov under Docket No. FAA-2026-8812.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

FOR FURTHER INFORMATION CONTACT:

Camille Seay, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 817-222-5149; email: camille.l.seay@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-2026-8812; Project Identifier MCAI-2025-01723-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, 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 Camille Seay, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 817-222-5149; email: camille.l.seay@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025-0255, dated November 19, 2025 (EASA AD 2025-0255) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300 B4-601, A300 B4-603, A300 B4-620, A300 B4-622, A300 B4-605R, A300 B4-622R, A300 C4-620, A300 C4-605R Variant F, A300 F4-605R and A300 F4-622R airplanes. Model A300 C4-620 airplanes are not certificated by the FAA and are not included on the U.S. type certificate

data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed, as specified in Airbus A300–600 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 4.3, dated September 4, 2025.

EASA AD 2025–0255 specifies that it requires a task (limitation) already in Airbus A300–600 Airworthiness Limitations Section (ALS) Part 2 Revision 4 that is required by EASA AD 2024–0009 (which corresponds to FAA AD 2024–16–02, Amendment 39–22808 (89 FR 75464, September 16, 2024) (AD 2024–16–02)), and that incorporation of EASA AD 2025–0255 invalidates (terminates) prior instructions for that task. This proposed AD therefore would terminate the limitations required by paragraph (dd) of AD 2024–16–02 for the tasks identified in the material referenced in EASA AD 2025–0255 only.

The FAA is proposing this AD to address fatigue cracking in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2025–0255 specifies new or more restrictive airworthiness limitations for airplane structures. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2025–0255 described previously, as incorporated by reference. Any differences with EASA

AD 2025–0255 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2025–0255 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2025–0255 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2025–0255 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2025–0255. Material required by EASA AD 2025–0255 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–8812 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA’s process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI

ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOC paragraph under “Additional AD Provisions.” This new format includes a “Provisions for Alternative Actions and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2026–8812; Project Identifier MCAI–2025–01723–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 2, 2026.

(b) Affected ADs

This AD affects AD 2024–16–02, Amendment 39–22808 (89 FR 75464, September 16, 2024) (AD 2024–16–02).

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1)

through (4) of this AD, certificated in any category.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 C4–605R Variant F airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0255, dated November 19, 2025 (EASA AD 2025–0255).

(h) Exceptions to EASA AD 2025–0255

(1) Where EASA AD 2025–0255 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2025–0255.

(3) Paragraph (3) of EASA AD 2025–0255 specifies revising the approved aircraft maintenance program (AMP) within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2025–0255 is at the applicable associated thresholds as incorporated by the requirements of paragraph (3) of EASA AD 2025–0255, or within 90 days after the effective date of this AD, whichever occurs later.

(5) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2025–0255.

(6) This AD does not adopt the “Remarks” section of EASA AD 2025–0255.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2025–0255.

(j) Terminating Action for Certain Tasks Required by AD 2024–16–02

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2024–16–02 for the tasks identified in the material referenced in EASA AD 2025–0255 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Additional Information

For more information about this AD, contact Camille Seay, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 817–222–5149; email: camille.l.seay@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025–0255, dated November 19, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 14, 2026.

Lona C. Saccomando,

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

[FR Doc. 2026–19090 Filed 9–16–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2026–0962]

RIN 1625–AA09

Drawbridge Operation Regulation; Mystic River, Mystic, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Route 1 Bridge across Mystic River, mile 2.8, at Mystic, CT. The bridge owner, Connecticut Department of Transportation (CTDOT), submitted a request on July 10, 2026, to remove the opening restrictions currently in place from November 1 through April 30 and allow the bridge to provide consistent bridge operations throughout the year. We invite your comments on this proposed rulemaking. **DATES:** Comments and related material must be received by the Coast Guard on or before October 19, 2026.

ADDRESSES: You may submit comments identified by docket number USCG–2026–0962 at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Stephanie E. Lopez, Northeast Coast Guard District, Bridge Management Specialist, telephone 571–608–5676, email Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)

§ Section

U.S.C. United States Code

CTDOT Connecticut Department of Transportation

II. Background, Purpose and Legal Basis

The Route 1 Bridge at mile 2.8, across the Mystic River, Mystic, CT, has a vertical clearance of 4.15 feet at mean high water and a horizontal clearance of approximately 75 feet. Waterway users include recreational and commercial vessels, including fishing vessels.

The existing drawbridge operating regulations are listed at 33 CFR 117.211(b). The current regulations in 33 CFR 117.211(b) contain the following two sections: (1) From May 1 through October 31, from 7:40 a.m. to 6:40 p.m., the draw need only open hourly at twenty minutes before the hour. (2) From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hours’ notice is given by calling the number posted at the bridge.

CTDOT is requesting the modification of the requirements in 33 CFR 117.211(b) to provide consistent bridge openings by removing the six-hour notice from November 1 through April 30. Removing this restriction will allow the bridge to open on signal for all vessels year-round, except that from 7:40 a.m. to 6:40 p.m. when the draw shall open when needed hourly at twenty minutes before the hour. CTDOT will provide bridge attendants on a continuous basis to provide consistent bridge operations throughout the year.

III. Discussion of Proposed Rule

The proposed rule removes operating restrictions from November 1 through April 30, providing consistent operations throughout the year. The draw shall open on signal, except from 7:40 a.m. to 6:40 p.m. when the draw shall open hourly at twenty minutes before the hour when needed.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons.

This regulatory action improves the ability of the bridge to open on signal for both commercial and recreational vessels, reducing potential delays for vessels transiting the Mystic River in the vicinity of the bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

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

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

power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

E. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01–001–01, Rev. 01., 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 (42 U.S.C. 4321–*et seq.*). 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Such actions are 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2026–0962 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts through the “Subscribe” option, you will be notified when comments/updates are posted, or a final rule is published.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.

■ 2. Revise 117.211 paragraph (b) to read as follows:

§ 117.211 Mystic River

* * * * *

(b) The draw of the U.S. 1 Bridge, mile 2.8, at Mystic, shall open on signal for all vessels, except that, from 7:40 a.m. to 6:40 p.m., the draw need only to

open hourly at twenty minutes to the hour.

Matthew Lake,

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

[FR Doc. 2026–19057 Filed 9–16–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2026–0960]

RIN 1625–AA09

Drawbridge Operation Regulation; Connecticut River, East Haddam, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Route 82 Bridge across Connecticut River, mile 16.8, at East Haddam, CT. The bridge owner, Connecticut Department of Transportation (CTDOT), submitted a request on July 10, 2026, to remove the opening restrictions currently in place for November 1 through April 30 and allow the bridge to provide consistent bridge operations throughout the year. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 19, 2026.

ADDRESSES: You may submit comments identified by docket number USCG–2026–0960 at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Stephanie E. Lopez, Northeast Coast Guard District, Bridge Management Specialist, telephone 571–608–5676, email Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget

NPRM Notice of Proposed Rulemaking
(Advance, Supplemental)
§ Section
U.S.C. United States Code
CTDOT Connecticut Department of
Transportation

II. Background, Purpose and Legal Basis

The Route 82 Bridge at mile 16.8, across the Connecticut River, East Haddam, CT, has a vertical clearance of 22 feet at mean high water in the closed position and a horizontal clearance of approximately 180 feet. Waterway users include recreational and commercial vessels to include fishing vessels.

The existing drawbridge operating regulations are listed at 33 CFR 117.205(c). The current regulations in 33 CFR 117.205(c) contain the following two sections: (1) From May 1 through October 31, the draw shall open on signal for commercial vessels. For recreational vessels, the draw shall open on signal, except that from 6 a.m. to 8 p.m. the draw need open for recreational vessels on the hour only. (2) From November 1 through April 30, the draw shall open on signal for all vessels, except from 8 p.m. to 4 a.m. the draw shall open on signal if at least six-hours' notice is given by calling the phone number posted at the bridge.

CTDOT is requesting the modification of the requirements in 33 CFR part 117.205(c) to provide consistent bridge openings and continuous uniform regulation by removing the required six-hour notice from November 1 through April 30. CTDOT will provide bridge attendants on a continuous basis to provide consistent bridge operations throughout the year. By removing this restriction and adding continuous bridge attendants, this will allow the draw to open on signal for commercial vessels year-round. The draw will open for recreational vessels on signal, except between the hours of 6 a.m. to 8 p.m. when the draw will be opened for recreational vessels when needed on the hour only.

III. Discussion of Proposed Rule

The proposed rule removes operating restrictions previously required between November 1 through April 30, providing consistent operations throughout the year. The draw shall open on signal for commercial vessels year-round. For recreational vessels, the draw shall open on signal year-round, except between the hours from 6 a.m. to 8 p.m. where the draw will open for recreational vessels when needed on the hour only.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and

Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons.

This regulatory action improves the ability of the bridge to open on signal for both commercial and recreational vessels, reducing potential delays for vessels transiting the Connecticut River in the vicinity of the bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

E. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 01., 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 *et seq.*). 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2026–0960 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. If you go to the online docket and sign up for email alerts through the “Subscribe” option, you will be notified when comments/updates are posted, or a final rule is published.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.

■ 2. Revise § 117.205 paragraph (c) to read as follows:

§ 117.205 Connecticut River

* * * * *

(c) The draw of the Route 82 Bridge at mile 16.8, across the Connecticut River, East Haddam, CT, shall open on signal for commercial vessels year-round. For recreational vessels, the draw will open on signal year-round, except for the period from 6 a.m. through 8 p.m. daily when the draw will only open on the hour for recreational vessels when needed.

Matthew Lake,

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

[FR Doc. 2026–19059 Filed 9–16–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2026–0961]

RIN 1625–AA09

Drawbridge Operation Regulation; Niantic River, Between Waterford and Niantic, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Route 156 Bridge across Niantic River, mile 0.1, between Waterford and Niantic, CT. The bridge owner, Connecticut Department of Transportation (CTDOT), submitted a request on July 10, 2026, to remove the opening restrictions currently in place for November 1 through April 30 and allow the bridge to provide consistent bridge operations throughout the year. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 19, 2026.

ADDRESSES: You may submit comments identified by docket number USCG–2026–0961 at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Stephanie E. Lopez, Northeast Coast Guard District, Bridge Management Specialist, telephone 571–608–5676, email Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
CTDOT Connecticut Department of Transportation

II. Background, Purpose and Legal Basis

The Route 156 Bridge at mile 0.1, across the Niantic River, between Waterfront and Niantic, CT, has a vertical clearance of 32.25 feet at mean high water and a horizontal clearance of approximately 100.3 feet. Waterway users include recreational and commercial vessels, which include fishing vessels.

The existing drawbridge operating regulations are listed at 33 CFR 117.215(b). The current regulations in 33 CFR 117.215(b) state that the draw of the S156 Bridge, mile 0.1, at Niantic, shall open on signal; except that from 7 a.m. to 8 a.m., and from 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels. From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours’ notice is given by calling the number posted at the bridge.

CTDOT is requesting the modification of the requirements in 33 CFR 117.215(b) to provide consistent bridge openings by removing the six-hour notice from November 1 through April 30. Removing this restriction will allow the bridge to open on signal for all vessels year-round, except that, from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, excluding holidays, the draw shall open only for the passage of commercial vessels. CTDOT will provide bridge attendants on a continuous basis to provide consistent bridge operations throughout the year.

III. Discussion of Proposed Rule

The proposed rule removes operating restrictions from November 1 through April 30, providing consistent operations throughout the year. The draw shall open on signal for

commercial vessels year-round. For recreational vessels, the draw shall open on signal year-round, except from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, excluding holidays.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons.

This regulatory action improves the ability of the bridge to open on signal for both commercial and recreational vessels, reducing potential delays for vessels transiting the Niantic River in the vicinity of the bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

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

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

E. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01–001–01, Rev. 01., 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 (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 proposed rule promulgates the operating regulations or procedures for drawbridges. Such actions are 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2026–0961 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts through the “Subscribe” option, you will be notified when comments/updates are posted, or a final rule is published.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.

■ 2. Revise 117.215 paragraph (b) to read as follows:

§ 117.215 Niantic River

* * * * *

(b) The draw of the S156 Bridge, mile 0.1, at Niantic, shall open on signal for commercial vessels year-round. For recreational vessels, the draw will open on signal year-round, except the period from 7 a.m. through 8 a.m., and from 4

p.m. through 5 p.m., Monday through Friday, when the draw will remain closed, excluding holidays.

Matthew Lake,

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

[FR Doc. 2026–19058 Filed 9–16–26; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 91, No. 179

Thursday, September 17, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0072]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Coconut Fruit From Belize Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh coconut fruit from Belize into the United States. Based on the analysis, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh coconut fruit from Belize. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 16, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2022–0072 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0072, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave. #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at www.regulations.gov or in our reading room, which is located

in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Zachary Schultzhaus, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 5601 Sunnyside Ave., Beltsville, MD 20705; (301) 851–4022; Zachary.Schultzhaus@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of fruits and vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization of Belize to allow the importation of fresh (green, unhusked) coconut (*Cocos nucifera*) fruit from Belize into the United States. As part of our evaluation of Belize’s request, we have prepared a pest risk assessment to identify the pests of quarantine significance that could follow the pathway of the importation of fresh coconut fruit into the United States from Belize. Based on the pest risk assessment, a risk management document (RMD) was prepared to identify phytosanitary measures that could be applied to the fresh coconut to mitigate the pest risk.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk assessment and RMD for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh coconut from

Belize, may be viewed on the Regulations.gov website or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk assessment and RMD by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh coconut fruit from Belize in a subsequent notice. If the overall conclusions of our analysis and the Administrator’s determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh coconut fruit from Belize into the United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of September 2026.

Kelly Moore,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026–19044 Filed 9–16–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Record of Decision on Gould Wash Flood Protection Final Plan—Environmental Impact Statement, Washington County, Utah

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice of availability; record of decision.

SUMMARY: The NRCS Utah State Office announces the availability of the Record of Decision (ROD) for the Supplemental Watershed Plan No. 10 and Final Environmental Impact Statement (Final Plan-EIS) for the Gould Wash Flood Protection Project in Washington County, Utah. NRCS has selected the “New Detention Dam and 3,000 cfs

Channel Modifications” alternative as the preferred alternative. This alternative includes constructing a dry detention dam upstream of Hurricane City along Gould Wash to reduce and manage flood flows, modifications to the Gould Wash channel through Hurricane City to safely convey floodwaters, and acquisition of easements necessary for channel modifications and areas subject to flooding.

ADDRESSES: The ROD and Final Plan-EIS are available on the NRCS project website at: <https://www.nrcs.usda.gov/conservation-basics/watersheds/gould-wash-flood-protection-sponsor-washington-county>.

FOR FURTHER INFORMATION CONTACT: Ammon Boswell, telephone (435) 459-1621; email: ammon.boswell@usda.gov. Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY mode)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION: The ROD identifies NRCS’s selected alternative for the Gould Wash Flood Protection Project, as described in the March 2026 Final Plan-EIS for Washington County, Utah. NRCS reached its decision after reviewing the Final Plan-EIS, which is available on the NRCS project website listed in the **ADDRESSES** section of this notice and was announced on March 20, 2026, through a notice of availability (91 FR 13603). NRCS has selected the proposed action alternative, titled “New Detention Dam and 3,000 cfs Channel Modifications.” This alternative includes constructing a dry detention dam upstream of Hurricane City along Gould Wash to reduce and manage flood flows, modifications to the Gould Wash channel through Hurricane City to safely convey floodwaters, and acquisition of easements necessary for channel modifications and areas subject to flooding.

The ROD documents the basis for NRCS’s decision on the selected alternative, including the mitigation measures that will be implemented and the environmental, social, and economic factors considered under the National Environmental Policy Act (NEPA). NRCS concludes that the selected alternative provides the most balanced approach to meeting project objectives while minimizing adverse effects.

NRCS reviewed and considered all substantive comments received on the Final Plan-EIS following publication of

the notice of availability on March 20, 2026 (91 FR 13603). While the comments did not require changes to the Final Plan-EIS, a summary of the comments and NRCS’s responses, along with supporting materials, is available on the NRCS project website listed in the **ADDRESSES** section above. Watershed planning is authorized by the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83-566), as amended, and the Flood Control Act of 1944 (Pub. L. 78-534).

Travis Mote,

Acting Utah State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2026-19055 Filed 9-16-26; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Rep. Wilson and U.S. Commission on the Social Status of Black Men and Boys To Honor Parents Carrying Forward the Legacies of Black Children Lost to Violence

AGENCY: U.S. Commission on the Social Status of Black Men and Boys (CSSBMB), U.S. Commission on Civil Rights.

ACTION: Notice of CSSBMB FY26 Q2 public business meeting.

DATES: Friday, September 18, 4:30 p.m. EDT.

ADDRESSES: 801 Allen Y. Lew Place NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Diamond Newman, 202-339-2371, dnewman@usccr.gov.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 116-156, 1134 Stat. 700 (2020), the U.S. Commission on the Social Status of Black Men and Boys (CSSBMB) will hold its FY26 Second Quarter Business Meeting exploring CSSBMB business items, operations, and next steps.

For more information on the CSSBMB or the upcoming briefing, please visit www.usccr.gov/CSSBMB and CSSBMB’s Instagram, Facebook, and X.

Zakee Martin,

U.S. CSSBMB Deputy Director.

[FR Doc. 2026-19062 Filed 9-16-26; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Current Population Survey, Annual Social and Economic Supplement

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed and continuing information collections. These comments help 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 on the proposed revision of the Current Population Survey (CPS) Annual Social and Economic Supplement (ASEC) 2027 Field Test collection, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 16, 2026.

ADDRESSES: Interested persons are invited to submit written comments by email to Hyon B. Shin, Assistant Division Chief in the Social, Economic, and Housing Statistics Division via the internet at dsd.cps@census.gov. Please reference Current Population Survey Annual Social and Economic Supplement (CPS ASEC) 2027 Field Test in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2026-0496, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in

Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Hyon B. Shin, Assistant Division Chief by email (dsd.cps@census.gov) or by phone (301-763-6169).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of information related to a field test of the CPS in calendar year 2027.

The CPS has been the source of official government statistics on employment and unemployment since 1942. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. The CPS collects labor force information for the civilian noninstitutional population including employment status, number of hours worked, job search activities, earnings, duration of unemployment, and the industry and occupation classification of the job held the previous week. Data for the CPS are currently collected by Census field interviewers via in-person interviews or by telephone. In February, March, and April of any collection year, the Census Bureau collects additional information via the ASEC supplement to the CPS.

The ASEC collects information on work experience, personal income, noncash benefits, current and previous year health insurance coverage, employer-sponsored insurance take-up, and migration. The ASEC is the official source of national poverty estimates calculated in accordance with the Office of Management and Budget's Statistical Policy Directive 14. Two other important national estimates derived from the ASEC are real median household income and the number and percent of individuals without health insurance coverage.

The 2027 Field Test's goal is to continue the testing conducted for the CPS by incorporating the ASEC supplement. This is the third of three major field tests with the first completed in 2025 and the second in 2026, with an ultimate goal for the ASEC to follow the phase-in changes to the CPS, planned for 2027 through 2028, in 2029.

II. Method of Collection

The 2027 Field Test is planned for January 2027 until May 2027. This will

be the first time that the ASEC supplement will be administered as a self-response mode, therefore, the two main goals of the proposed field test are outlined below.

Introducing a self-response mode: The current CPS ASEC questionnaire collects data via computer-assisted personal interviewing (CAPI). Since the ASEC is introducing an internet self-response (ISR) mode, qualitative research, expert review, and smaller-scale tests were conducted to transform the CAPI question wording into an ISR-appropriate format. The 2027 Field Test is the first opportunity to conduct a full-scale field test to evaluate comparability of the CAPI questions to the ISR questions.

Content Testing: Additionally, multiple rounds of qualitative tests, expert review, and smaller-scale tests were employed for questionnaire clarity and comparability. This field test will utilize the qualitative research findings to do a split-path examination of a control version to a test version of the ASEC questions changes. All questions on the ASEC will have some changes because this is the first instance of a self-response mode so questions that a field representative would ask are updated for a self-respondent. The goal of the test is to determine the impact of changing question wording and response categories, as well as redefining underlying constructs, on the quality of the key ASEC estimates.

III. Data

OMB Control Number: 0607-0354.

Form Number(s): None.

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Households.

Estimated Number of Respondents: 50,000.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 41,667.

Estimated Total Annual Cost to Public: \$0. There are no costs to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 182 and Title 29, United States Code, Sections 1-9.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the

accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026-19087 Filed 9-16-26; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730-774 ("EAR" or "the Regulations"),¹ I hereby grant the request of the Office of Export Enforcement ("OEE") to renew the temporary denial order ("TDO") issued in this matter on September 16, 2025. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because PJSC Aeroflot ("Aeroflot") has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801-4852 ("ECRA"). Section 4820(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

I. Procedural History

On April 7, 2022, the then-Assistant Secretary of Commerce for Export Enforcement (“Assistant Secretary”) signed an order denying Aeroflot export privileges for a period of 180 days on the grounds that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with Section 766.24(d) of the Regulations.³ The renewal order was issued on October 3, 2022,⁴ and was effective upon issuance. Subsequent renewal orders were issued on March 29, 2023, September 23, 2023, September 20, 2024, and September 16, 2025 respectively, and were also effective upon issuance.⁵

On August 3, 2026, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on September 16, 2025. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Aeroflot by alternative means in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR

766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.”⁶ *Id.*

B. The TDO and BIS’s Request for Renewal

Effective February 24, 2022, BIS imposed controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (Section 746.8(a)(1) of the EAR).⁷ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and

Spacecraft (“AVS”) (Section 740.15 of the EAR).⁸ Any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE’s request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO and the renewal orders subsequently issued in this matter, as well as other evidence developed during this investigation. These facts and evidence demonstrate that Aeroflot has continued, and continues, to disregard U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Aeroflot engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Beijing, China, Delhi, India, and Dubai, United Arab Emirates, without the required BIS authorization.⁹ Further evidence submitted by BIS indicated that Aeroflot was continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, evidence presented by BIS indicated that, after the initial order was issued, Aeroflot continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹⁰ Specifically, the October 3, 2022 renewal order detailed flights into and out of Russia from/to Minsk, Belarus, Delhi, India, and Istanbul, Turkey, as well as within Russia.¹¹ The March 29, 2023 renewal order detailed flights into and out of Russia from/to Yerevan, Armenia, Shanghai, China, Bangkok,

⁸ 87 FR 13048 (Mar. 8, 2022).

⁹ Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 65309 flew from Beijing, China to Moscow, Russia, and SN 41690 flew from Dubai, UAE to Moscow, Russia. In addition, on March 7, 2022, SN 63511 flew from Delhi, India to Moscow, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows that SN 41690 flew from Istanbul, Turkey to Moscow, Russia on September 20, 2022 and from Delhi, India to Moscow, Russia on September 23, 2022. In addition, on September 1, 2022, SN 41214 flew from Minsk, Belarus to Moscow, Russia. On September 13, 2022, SN 41214 flew from Moscow, Russia to Sochi, Russia.

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21611).

³ At the time of the renewal, Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

⁴ The October 3, 2022 renewal order, which was effective upon issuance, was published in the **Federal Register** on October 7, 2022 (87 FR 60985).

⁵ The March 29, 2023 renewal order was published in the **Federal Register** on April 3, 2023 (88 FR 19609). The September 23, 2023 renewal order was published in the **Federal Register** on September 28, 2023 (88 FR 66807). The September 20, 2024 renewal order was published in the **Federal Register** on September 25, 2024 (89 FR 78283). The September 16, 2025 renewal order was published in the **Federal Register** on September 19, 2025 (90 FR 45178).

⁶ 88 FR 59791 (Aug. 30, 2023).

⁷ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

Thailand, and Urgench, Uzbekistan, as well as within Russia.¹² The September 23, 2023 renewal order detailed flights into and out of Russia from/to Beijing, China, Delhi, India, and Antalya, Turkey.¹³ The September 20, 2024 renewal order detailed flights into and out of Russia from/to Antalya, Turkey, Tashkent, Uzbekistan, and Sharm el-Sheikh, Egypt.¹⁴ Additionally, the September 16, 2025 renewal order detailed flights into and out of Russia

from/to Cairo, Egypt, Antalya, Turkey, and Phuket, Thailand, as well as within Russia.¹⁵

Since that time, Aeroflot has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its August 3, 2026 request for renewal of the TDO, BIS submitted evidence that Aeroflot is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in

violation of the September 19, 2025 renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Aeroflot continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Minsk, Belarus; Cairo, Egypt; Antalya, Turkey; and Phuket, Thailand, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73126	41214	737-8LJ (B738)	Antalya, TR/Novosibirsk, RU	July 16, 2026.
RA-73126	41214	737-8LJ (B738)	Yekaterinburg, RU/Hurghada, EG	July 8, 2026.
RA-73126	41214	737-8LJ (B738)	Sharm el-Sheikh, EG/Yekaterinburg, RU	July 7, 2026.
RA-73126	41214	737-8LJ (B738)	Moscow, RU/Makhachkala, RU	July 6, 2026.
RA-73126	41214	737-8LJ (B738)	Antalya, TR/Moscow, RU	July 5, 2026.
RA-73144	41690	777-3M0 (ER) (B77W)	Phuket, TH/Vladivostok, RU	July 14, 2026.
RA-73144	41690	777-3M0 (ER) (B77W)	Moscow, RU/Male, MV	July 7, 2026.
RA-73144	41690	777-3M0 (ER) (B77W)	Vladivostok, RU/Moscow, RU	July 5, 2026.
RA-73144	41690	777-3M0 (ER) (B77W)	Khabarovsk, RU/Moscow, RU	July 3, 2026.
RA-73144	41690	777-3M0 (ER) (B77W)	Bangkok, TH/Moscow, RU	June 30, 2026.
RA-73146	65309	777-300 (ER) (B77W) ..	Bangkok, TH/Moscow, RU	July 13, 2026.
RA-73146	65309	777-300 (ER) (B77W) ..	Moscow, RU/Vladivostok, RU	July 7, 2026.
RA-73146	65309	777-300 (ER) (B77W) ..	Petropavlovsk-Kamchatsky, RU/Moscow, RU	July 5, 2026.
RA-73146	65309	777-300 (ER) (B77W) ..	Bangkok, TH/Moscow, RU	June 22, 2026.
RA-73146	65309	777-300 (ER) (B77W) ..	Moscow, RU/Bangkok, TH	June 21, 2026.
RA-73150	65307	777-3M0 (ER) (B77W) ..	Male, MV/Moscow, RU	July 12, 2026.
RA-73150	65307	777-3M0 (ER) (B77W) ..	Moscow, RU/Vladivostok, RU	July 5, 2026.
RA-73150	65307	777-3M0 (ER) (B77W) ..	Moscow, RU/Male, MV	July 3, 2026.
RA-73150	65307	777-3M0 (ER) (B77W) ..	Male, MV/Moscow, RU	July 2, 2026.
RA-73150	65307	777-3M0 (ER) (B77W) ..	Phuket, TH/Vladivostok, RU	June 9, 2026

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aeroflot has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Aeroflot has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the

United States and abroad that they should avoid dealing with Aeroflot, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States

¹² Publicly available flight tracking information shows that SN 41214 flew from Yerevan, Armenia to Moscow, Russia on February 16, 2023 and from Urgench, Uzbekistan to Moscow, Russia on March 1, 2023. In addition, on March 2, 2023, SN 41214 flew from Moscow, Russia to Sochi, Russia. On February 4, 2023, SN 41690 flew from Bangkok, Thailand to Moscow, Russia. On March 5, 2023 and March 19, 2023, respectively, SNs 65309 and 41690 flew from Shanghai, China to Moscow, Russia.

¹³ Publicly available flight tracking information shows that on August 31, 2023, SN 41690 flew from Beijing, China to Moscow, Russia. On September 19, 2023, SN 65309 flew from Delhi, India to Moscow, Russia. On September 17, 2023, SN 65307 flew from Antalya, Turkey to Moscow, Russia.

¹⁴ Publicly available flight tracking information shows that on September 10, 2024, SN 41214 flew from Nizhny Novgorod, Russia to Antalya, Turkey. On August 14, 2024, SN 41214 flew from Moscow, Russia to Tashkent, Uzbekistan and on August 9,

2025 SN 41214 flew from Sharm el-Sheikh, Egypt to Moscow, Russia.

¹⁵ Publicly available flight tracking information shows that on August 17, 2025, SN 41214 flew from Cairo, Egypt to Moscow, Russia. On July 25, 2025, SN 65309 flew from Antalya, Turkey to Moscow, Russia. On August 8, 2025, SN 65307 flew from Phuket, Thailand to Moscow, Russia and flew from Moscow, Russia to Yuzhno-Sakhalinsk, Russia on August 14, 2025.

that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aeroflot any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aeroflot of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aeroflot acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aeroflot of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Aeroflot in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aeroflot, or service any item, of whatever origin, that is owned, possessed or controlled by Aeroflot if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aeroflot by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Aeroflot may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aeroflot as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aeroflot, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Dated: September 11, 2026.

David A. Peters,

Assistant Secretary of Commerce Secretary for Export Enforcement.

[FR Doc. 2026–19020 Filed 9–16–26; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Azur Air, Office 29, Vzletnaya St. 57, Krasnoyarsk, Russia 660020; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on September 16, 2025. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Azur Air (“Azur”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). Section 4820(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

I. Procedural History

On April 7, 2022, the then-Assistant Secretary of Commerce for Export Enforcement (“Assistant Secretary”) signed an order denying Azur’s export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² The TDO was subsequently renewed on October 3, 2022, March 29, 2023, September 23, 2023, September 20, 2024, and September 16, 2025³ in accordance with Section 766.24(d) of the Regulations.⁴ The September 20, 2024, renewal order was modified on January 31, 2025⁵ to update the address for Azur based on additional investigation. No other changes or modifications were made to the September 20, 2024, renewal order. This renewal order reflects the corrected address.

On August 3, 2026, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on September 16, 2025. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Azur by alternative means in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21614).

³ The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60983). The March 29, 2023 renewal order was published in the **Federal Register** on April 4, 2023 (88 FR 19908). The September 23, 2023 renewal order was published in the **Federal Register** on September 28, 2023 (88 FR 66805). The September 20, 2024 renewal order was published in the **Federal Register** on September 25, 2024 (89 FR 78280). The September 16, 2025 renewal order was published in the **Federal Register** on September 19, 2025 (90 FR 45175).

⁴ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods if it believes that renewal is necessary in the public interest to prevent an imminent violation. In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.

⁵ The January 30, 2025 modification order was published in the **Federal Register** on February 5, 2025 (90 FR 9017).

showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.” ⁶ *Id.*

B. The TDO and BIS’s Request for Renewal

Effective February 24, 2022, BIS imposed controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russian Federation (“Russia”), including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (Section 746.8(a)(1) of the EAR).⁷ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2,

2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (Section 740.15 of the EAR).⁸ Any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE’s request for renewal for a period of one year is based upon the facts underlying the issuance of the TDO and the renewal orders subsequently issued in this matter, as well as other evidence developed during this investigation. This evidence demonstrates that Azur has continued, and continues, to disregard U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Azur engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Nha Trang, Vietnam; Dubai, United Arab Emirates (“UAE”); and Antalya, Turkey, without the required BIS authorization.⁹ Further evidence indicated that Azur also operated aircraft subject to the EAR on domestic flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial TDO issued, Azur continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.¹⁰ The October 3, 2022 renewal order detailed flights into and out of Russia from/to Antalya, Turkey; Dalaman, Turkey; and Bodrum, Turkey.¹¹ The

March 29, 2023 renewal order detailed flights into and out of Russia from/to Sharm el-Sheikh, Egypt; Goa, India; Male, Maldives; Rayong, Thailand; and Adana, Turkey.¹² Similarly, the September 23, 2023 renewal order detailed flights into and out of Russia from/to Hurghada, Egypt; Sharm el-Sheikh, Egypt; Phuket, Thailand; Antalya, Turkey; and Dalaman, Turkey.¹³ Further, the September 20, 2024 renewal order detailed flights into and out of Russia from/to Antalya, Turkey; Hurghada, Egypt; Sharm el-Sheikh, Egypt; and Dalaman, Turkey.¹⁴ Finally, the September 16, 2025 renewal order detailed flights into and out of Russia from/to Antalya, Turkey; Dalaman, Turkey; Nha Trang, Vietnam; and Sharm el-Sheikh, Egypt.¹⁵

Since that time, Azur has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its August 3, 2026 request for renewal of the TDO, BIS submitted evidence that Azur continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the September 16, 2025 renewal order and/or the Regulations. Specifically, BIS’s evidence and related investigation demonstrates that Azur continues to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Antalya, Turkey; Bodrum, Turkey; Dalaman, Turkey; Nha Trang, Vietnam; Phu Quoc, Vietnam; Phuket, Thailand; Rayong,

¹² Publicly available flight tracking information shows that SN 29377 flew from Adana, Turkey to Moscow, Russia on March 13, 2023 and from Sharm el-Sheikh, Egypt to Moscow, Russia on March 14, 2023. In addition, SN 30045 flew from Goa, India to Perm, Russia on March 3, 2023 and from Rayong, Thailand to Kemerovo, Russia on March 6, 2023. On February 18, 2023, SN 24947 flew from Male, Maldives to Moscow, Russia.

¹³ Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Moscow, Russia on September 19, 2023 and from Phuket, Thailand to Vladivostok, Russia on August 15, 2023. In addition, SN 26271 flew from Hurghada, Egypt to Moscow, Russia on August 31, 2023 and Sharm el-Sheikh, Egypt to Perm, Russia on September 20, 2023. On September 12, 2023, SN 24947 flew from Dalaman, Turkey to Yekaterinburg, Russia.

¹⁴ Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Sochi Russia on September 13, 2024 and from Hurghada, Egypt to Samara, Russia on September 5, 2024. In addition, SN 30045 flew from Sharm el-Sheikh, Egypt to Ufa, Russia on September 7, 2024. On September 3, 2024, SN 24947 flew from Dalaman, Turkey to Yekaterinburg, Russia.

¹⁵ Publicly available flight tracking information shows that SN 29377 flew from Ufa, Russia to Antalya, Turkey on September 4, 2025 and from Nha Trang, Vietnam to Novosibirsk, Russia on July 10, 2025. In addition, SN 30043 flew from Dalaman, Turkey to Kazan, Russia on August 17, 2025. On August 15, 2025, SN 24947 flew from Sharm el-Sheikh, Egypt to Moscow, Russia.

⁶ 88 FR 59791 (Aug. 30, 2023).

⁷ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022 which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁸ 87 FR 13048 (Mar. 8, 2022).

⁹ Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 27612 flew from Nha Trang, Vietnam to Moscow, Russia and on March 10, 2022, SN 27909 flew from Dubai, UAE to Vladivostok, Russia. In addition, on March 17, 2022, SN 21614 flew from Antalya, Turkey to Kazan, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Moscow, Russia on September 21, 2022. In addition, on September 20, 2022, SN 26271 flew from Bodrum, Turkey to Moscow, Russia and SN 30045 flew from Dalaman, Turkey to Yekaterinburg, Russia.

Thailand, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73071	29377	757-2Q8 (B752)	Antalya, TR/Ulyanovsk, RU	July 17, 2026.
RA-73071	29377	757-2Q8 (B752)	Moscow, RU/Antalya, TR	July 9, 2026.
RA-73071	29377	757-2Q8 (B752)	Antalya, TR/Surgut, RU	July 8, 2026.
RA-73071	29377	757-2Q8 (B752)	Antalya, TR/Kazan, RU	July 6, 2026.
RA-73071	29377	757-2Q8 (B752)	Dalaman, TR/Moscow, RU	June 16, 2026.
RA-73029	26330	757-2K2 (B752)	Bodrum, TR/Moscow, RU	July 17, 2026.
RA-73029	26330	757-2K2 (B752)	Bodrum, TR/Moscow, RU	July 10, 2026.
RA-73029	26330	757-2K2 (B752)	Bodrum, TR/Moscow, RU	June 26, 2026.
RA-73029	26330	757-2K2 (B752)	Moscow, RU/Bodrum, TR	June 18, 2026.
RA-73029	26330	757-2K2 (B752)	Moscow, RU/Bodrum, TR	June 6, 2026.
RA-73076	30043	757-28A (B752)	Phuket, TH/Novosibirsk, RU	March 22, 2026.
RA-73076	30043	757-28A (B752)	Abakan, RU/Novosibirsk, RU	March 22, 2026.
RA-73076	30043	757-28A (B752)	Rayong, TH/Krasnoyarsk, RU	March 17, 2026.
RA-73076	30043	757-28A (B752)	Phu Quoc, VN/Novosibirsk RU	March 13, 2026.
RA-73076	30043	757-28A (B752)	Vladivostok, RU/Rayong, TH	March 9, 2026.
RA-73072	29382	757-2Q8 (B752)	Nha Trang, VN/Novosibirsk, RU	April 24, 2026.
RA-73072	29382	757-2Q8 (B752)	Phuket, TH/Novosibirsk, RU	April 22, 2026.
RA-73072	29382	757-2Q8 (B752)	Phu Quoc, VN/Novosibirsk, RU	April 16, 2026.
RA-73072	29382	757-2Q8 (B752)	Krasnoyarsk, RU/Rayong, TH	April 7, 2026.
RA-73072	29382	757-2Q8 (B752)	Rayong, TH/Novosibirsk, RU	March 26, 2026.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Azur has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Azur has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Azur, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Azur Air, Office 29, Vzletnaya St. 57, Krasnoyarsk, Russia 660020, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the

United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Azur any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Azur of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from

the United States, including financing or other support activities related to a transaction whereby Azur acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Azur of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Azur in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Azur, or service any item, of whatever origin, that is owned, possessed or controlled by Azur if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in

section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Azur by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Azur may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Azur as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Azur, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Dated: September 11, 2026.

David A. Peters,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2026–19021 Filed 9–16–26; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

UTair Aviation JSC, Khanty-Mansiysk Airport, Tyumen Region, Russia 628012; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on September 16, 2025. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the

Regulations and that renewal for an extended period is appropriate because UTair Aviation JSC (“UTair”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On April 7, 2022, the then-Assistant Secretary of Commerce for Export Enforcement (“Assistant Secretary”) signed an order denying UTair export privileges for a period of 180 days on the grounds that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with Section 766.24(d) of the Regulations.³ The renewal order was issued on October 3, 2022,⁴ and was effective upon issuance. Subsequent renewal orders were issued on March 29, 2023, September 23, 2023, September 20, 2024, and September 16, 2025 respectively, and were also effective upon issuance.⁵

On August 3, 2026, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on September 16, 2025. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to UTair by alternative means in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21611).

³ At the time of the renewal, Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

⁴ The October 3, 2022 renewal order, which was effective upon issuance, was published in the **Federal Register** on October 7, 2022 (87 FR 60987).

⁵ The March 29, 2023 renewal order was published in the **Federal Register** on April 4, 2023 (88 FR 19911). The September 23, 2023 renewal order was published in the **Federal Register** on September 28, 2023 (88 FR 66802). The September 20, 2024 renewal order was published in the **Federal Register** on September 26, 2024 (89 FR 78846). The September 16, 2025 renewal order was published in the **Federal Register** on September 19, 2025 (90 FR 45172).

respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.”⁶ *Id.*

B. The TDO and BIS’s Request for Renewal

Effective February 24, 2022, BIS imposed controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (Section 746.8(a)(1) of the EAR).⁷ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section

⁶ 88 FR 59791 (Aug. 30, 2023).

⁷ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). Section 4820(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (Section 740.15 of the EAR).⁸ Any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE’s request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO and the renewal orders subsequently issued in this matter, as well as other evidence developed during this investigation. These facts and evidence demonstrate that UTair has continued, and continues, to disregard U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that UTair engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from

destinations including, but not limited to, Jeddah, Saudi Arabia, Yerevan, Armenia, and Tashkent, Uzbekistan, without the required BIS authorization.⁹ Further evidence submitted by BIS indicated that UTair was continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, evidence presented by BIS indicated that, after the initial order was issued, UTair continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹⁰ Specifically, the October 3, 2022 renewal order detailed flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, and Tashkent, Uzbekistan.¹¹ The March 29, 2023 renewal order detailed flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, Dushanbe, Tajikistan, and Dubai, United Arab Emirates (“UAE”).¹² The September 23, 2023 renewal order detailed flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, Dushanbe, Tajikistan, Istanbul, Turkey, Tashkent, Uzbekistan, and Dubai, UAE.¹³ The September 20,

2024 renewal order detailed flights into and out of Russia from/to Khujand, Tajikistan, Istanbul, Turkey, Dubai, UAE, Baku, Azerbaijan, Samarkand, Uzbekistan, Bukhara, Uzbekistan, and Bishkek, Kyrgyzstan.¹⁴ Additionally, the September 16, 2025 renewal order detailed flights into and out of Russia from/to Baghdad, Iraq, Baku, Azerbaijan, Bukhara, Uzbekistan, and Tashkent, Uzbekistan, as well as within Russia.¹⁵

Since that time, UTair has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its August 3, 2026 request for renewal of the TDO, BIS submitted evidence that UTair is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the September 16, 2025 renewal order and/or the Regulations. Specifically, BIS’s evidence and related investigation demonstrates that UTair continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Antalya, Turkey; Samarkand, Uzbekistan; Dushanbe, Tajikistan; and Baku, Azerbaijan, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73089	37522	737-8GU (B738)	Antalya, TR/Grozny, RU	August 16, 2026.
RA-73089	37522	737-8GU (B738)	Samarkand, UZ/Moscow, RU	July 9, 2026.
RA-73089	37522	737-8GU (B738)	Moscow, RU/Bukhara, UZ	July 8, 2026.
RA-73089	37522	737-8GU (B738)	Moscow, RU/Tyumen, RU	July 7, 2026.
RA-73089	37522	737-8GU (B738)	Tyumen, RU/Yerevan, Armenia	July 5, 2026.
RA-73087	29936	737-8AS (B738)	Fergana, UZ/Surgut, RU	August 15, 2026.
RA-73087	29936	737-8AS (B738)	Samarkand, UZ/St. Petersburg, RU	July 9, 2026.
RA-73087	29936	737-8AS (B738)	Surgut, RU/St. Petersburg, RU	July 9, 2026.
RA-73087	29936	737-8AS (B738)	St. Petersburg, RU/Baku, AZ	July 8, 2026.
RA-73087	29936	737-8AS (B738)	Antalya, TR/Surgut, RU	July 6, 2026.
RA-73085	32779	737-8AS (B738)	Samarkand, UZ/Moscow, RU	August 12, 2026.
RA-73085	32779	737-8AS (B738)	Dushanbe, TJ/Moscow, RU	July 9, 2026.
RA-73085	32779	737-8AS (B738)	Moscow, RU/Yerevan, AM	July 8, 2026.
RA-73085	32779	737-8AS (B738)	Baku, AZ/Moscow, RU	July 6, 2026.
RA-73085	32779	737-8AS (B738)	Moscow, RU/Ufa, RU	July 5, 2026.
RA-73086	32780	737-8AS (B738)	Yerevan, AM/Moscow, RU	August 13, 2026.
RA-73086	32780	737-8AS (B738)	Krasnoyarsk, RU/Moscow, RU	July 9, 2026.
RA-73086	32780	737-8AS (B738)	Baku, AZ/Moscow, RU	July 8, 2026.
RA-73086	32780	737-8AS (B738)	Moscow, RU/Yerevan, AM	July 6, 2026.

⁸ 87 FR 13048 (Mar. 8, 2022).

⁹ Publicly available flight tracking information shows that on March 5, 2022, serial number (SN) 36387 flew from Jeddah, Saudi Arabia to Grozny, Russia, and on March 30, 2022, SN 28907 flew from Yerevan, Armenia to Tyumen, Russia. In addition, on March 31, 2022, SN 30437 flew from Tashkent, Uzbekistan to Moscow, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows that on September 19, 2022, SN 30437 flew from Tashkent, Uzbekistan to Moscow, Russia, and SN 30435 flew from Yerevan, Armenia to Moscow, Russia. In addition, on September 21, 2022, SN

28912 flew from Baku, Azerbaijan to Moscow, Russia.

¹² Publicly available flight tracking information shows that SN 37752 flew from Yerevan, Armenia to Moscow, Russia on March 23, 2023 and from Dubai, United Arab Emirates to Grozny, Russia on March 28, 2023. In addition, on March 29, 2023, SN 30437 flew from Dushanbe, Tajikistan to Moscow Russia and on March 7, 2023, SN 28912 flew from Baku, Azerbaijan to Ufa, Russia.

¹³ Publicly available flight tracking information shows that SN 37552 flew from Istanbul, Turkey to Grozny, Russia on September 19, 2023, SN 29936 flew from Yerevan, Armenia to Moscow, Russia on September 15, 2023. In addition, SN 32780 flew from Dushanbe, Tajikistan to Moscow, Russia on

September 8, 2023, and SN 32779 flew from Dubai, UAE to Tyumen, Russia on September 1, 2023.

¹⁴ Publicly available flight tracking information shows that SN 37552 flew from Khujand, Tajikistan to Tyumen, Russia on August 11, 2024, SN 29936 flew from Samarkand, Uzbekistan to Moscow, Russia on August 5, 2024. In addition, SN 32780 flew from Bishkek, Kyrgyzstan to Surgut, Russia on August 11, 2024.

¹⁵ Publicly available flight tracking information shows that on August 20, 2025, SN 37552 flew from Baghdad, Iraq to Moscow, Russia. On August 21, 2025, SN 29936 flew from Baku, Azerbaijan to St. Petersburg, Russia. On August 19, 2025, SN 32779 flew from Bukhara, Uzbekistan to Moscow, Russia. Additionally, on August 7, 2025, SN 32780 flew from Tashkent, Uzbekistan to Surgut, Russia.

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73086	32780	737-8AS (B738)	Moscow, RU/Dushane, TJ	July 6, 2026.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that UTair has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because UTair has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with UTair, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, UTair Aviation JSC, Khanty-Mansiysk Airport, Tyumen Region, Russia 628012, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except

directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of UTair any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by UTair of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby UTair acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from UTair of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from UTair in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by UTair, or service any item, of whatever origin, that is owned, possessed or controlled by UTair if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation,

maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to UTair by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, UTair may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by UTair as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to UTair, and shall be published in the Federal Register.

This Order is effective immediately and shall remain in effect for one year.

Dated: September 11, 2026.

David A. Peters,
Assistant Secretary of Commerce Secretary for Export Enforcement.
[FR Doc. 2026-19019 Filed 9-16-26; 8:45 am]
BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-817]

Oil Country Tubular Goods From the Socialist Republic of Vietnam: 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 SeAH Steel VINA Corporation (SeAH VINA) made sales of oil country tubular

goods (OCTG) from the Socialist Republic of Vietnam (Vietnam) at less than normal value (NV) during the period of review (POR) September 1, 2023, through August 31, 2024.

DATES: Applicable September 17, 2026.

FOR FURTHER INFORMATION CONTACT:

Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (240) 956-8630.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2026, Commerce published the *Preliminary Results* of the 2023–2024 administrative review of the antidumping duty order of OCTG from Vietnam in the **Federal Register** and invited interested parties to comment.¹ On April 6, 2026, we received case briefs from SeAH VINA, and from Axis Pipe and Tube, Borusan Pipe US Inc., Vallourec Star, and Welded Tube USA, Inc. (collectively, the domestic interested parties).² On April 13, 2026, SeAH VINA and the domestic interested parties submitted rebuttal briefs.³ Between July 10 and September 4, 2026, Commerce extended the deadline for the final results of this review by 59 days.⁴ Accordingly, the deadline for these final results is September 11, 2026. Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁵ The Issues and

Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which 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>.

Scope of the Order⁶

The merchandise covered by the Order is OCTG from Vietnam. For a complete description of the scope of the Order, see the Issues and Decision Memorandum.⁷

Analysis of Comments Received

All issues raised in case and rebuttal briefs filed by interested parties in this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in Appendix I to this notice.

Changes Since the Preliminary Results

Based on our review of the record and our analysis of the comments received, Commerce made certain changes to the weighted-average dumping margin calculation for SeAH VINA. For further discussion of these changes, see the Issues and Decision Memorandum.

Final Results of Administrative Review

Commerce determines that the following estimated weighted-average dumping margin exists for the period September 1, 2023, through August 31, 2024:

Exporter/manufacture	Weighted-average dumping margin (percent)
SeAH Steel VINA Corporation ...	15.52

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties in this review 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 **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by the final results of this review.

Because the mandatory respondent'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 calculated 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 calculated 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. To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also calculated an importer-specific *ad valorem* ratio based on estimated entered values. Where a mandatory respondent'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.⁸

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by SeAH VINA 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 Vietnam-wide rate (i.e., 111.47 percent)⁹ if there is no rate for the intermediate companies involved in the transaction.¹⁰

The final results of this review shall be the basis for the assessment of

¹ See *Oil Country Tubular Goods from Socialist Republic of Vietnam: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2023–2024*, 91 FR 12563 (March 16, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See SeAH VINA's Letter, "Case Brief," dated April 6, 2026; see also Domestic Interested Parties' Letter, "Domestic Interested Parties' Case Brief," dated April 6, 2026.

³ See SeAH VINA's Letter, "Rebuttal Brief," dated April 13, 2026; see also Domestic Interested Parties' Letter, "Domestic Interested Parties' Rebuttal Brief," dated April 13, 2026.

⁴ See Memoranda, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2023–2024," dated July 10, 2026; "Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2023–2024," dated August 20, 2026; and "Third Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2023–2024," dated September 4.

⁵ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁶ See *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014); see also *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders With Respect to Turkey and the Socialist Republic of Vietnam*, 79 FR 59740 (October 3, 2014) (collectively, *Order*).

⁷ See Issues and Decision Memorandum at 2–3.

⁸ See 19 CFR 352.106(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).

⁹ See *Order*, 79 FR at 53694.

¹⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.¹¹

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for SeAH VINA, the cash deposit rate will be the margin listed above; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most-recently completed segment of this proceeding in which the exporter was reviewed; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate established for the Vietnam-wide entity, which is 111.47 percent;¹² and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter with the subject merchandise. 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 this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent

assessment of double antidumping duties

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 11, 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 Since the Preliminary Results
- V. Discussion of the Issues
 - Comment 1: Whether to Select a Different Surrogate Country
 - Comment 2: Whether to Select Different Surrogate Financial Ratios
 - Comment 3: Whether to Value SeAH VINA's Hot-Rolled Coil (HRC) Using Market Economy (ME) Purchases Prices
 - Comment 4: Whether to Include Interest Expenses in the Calculation of Further Manufacturing Costs
 - Comment 5: Whether to Correct a Ministerial Error
 - Comment 6: Whether to Adjust Commerce's Differential Pricing Analysis
- VI. Recommendation

[FR Doc. 2026-19091 Filed 9-16-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; iEdison System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 2, 2026 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: iEdison System.

OMB Control Number 0693-0090.

Form Number(s): None.

Type of Request: Regular. Revision of an Existing Collection.

Number of Respondents: 6,193 for Invention Records, Patent Records, Utilization Records, and 22 for Domestic Manufacturing Waiver.

Average Hours per Response:

Invention Records: 1.25 hours.

Patent Records: .75 hours.

Utilization Records: 25 minutes.

Domestic Manufacturing Waiver

Requests: 13 hours.

Burden Hours:

Invention Records: 38,706 hours.

Patent Records: 23,224 hours.

Utilization Records: 77,413 hours.

Domestic Manufacturing Waiver

Requests: 286 hours.

Needs and Uses: The Bayh-Dole Act (35 U.S.C. 18) and its implementing regulations (37 CFR 401) allow for recipients of Federal research funding (Contractors) to retain ownership of inventions developed under Federal funding agreements. In exchange, the government retains certain rights to the invention, including a world-wide right to use by or on behalf of the U.S. government. The law also requires the Contractor to obtain permission for certain actions and fulfill reporting requirements including:

- a. Initial reporting of invention.

¹¹ See section 751(a)(2)(C) of the Act.

¹² See Order, 79 FR at 53694.

- b. Decision to retain title to invention.
- c. Filing of patent protection.
- d. Evidence of government support clause within patents.
- e. Submission of a license confirming the government's rights.
- f. Notice if the Contractor is going to discontinue the pursuit or continuance of patent protection.

g. Information related to the development and utilization of invention.

h. Permission to assign to a third party; and

i. Permission to waive domestic manufacturing requirements.

This information is used for a variety of reasons. It allows the government to identify technologies to which the government has rights to use without additional payment or licensing. This acts as a time and cost-saving mechanism to avoid unnecessary negotiating and payment. It also provides data for calculation of return on investment (ROI) from Federal funding and identifies successful research programs. Thirdly, it allows the government the opportunity to timely protect inventions which the Contractor declines title or discontinues patent protection. Many agencies utilize the iEdison system, managed by NIST, to collect this information. Agencies that do not register with iEdison are required to collect this information independently.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

Legal Authority: The Bayh-Dole Act (35 U.S.C. 18) and its implementing regulations (37 CFR 401); 35 U.S.C. 200–212.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and

entering either the title of the collection or the OMB Control Number 0693–0090.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–19088 Filed 9–16–26; 8:45 am]

BILLING CODE 3510–13–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; Analysis of and Review of Ocean Exploration Video Products

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 November 16, 2026.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648–0748 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 Liz Hoadley, NOAA Ocean Exploration, NOAA Disaster Response Center, 7344 Zeigler Blvd., Mobile, AL, 36608. (240) 429–8706; liz.hoadley@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension to an approved information collection.

NOAA's Office of Ocean Exploration and Research (NOAA Ocean Exploration) is the only federal organization dedicated to ocean exploration. By using unique capabilities in terms of personnel, technology, infrastructure, and exploration missions, NOAA Ocean Exploration is reducing unknowns in deep-ocean areas and providing high-value environmental intelligence needed by NOAA and the nation to address both current and emerging science and management needs. Our expertise, work products, and services generally fall into the areas outlined at <https://oceanexplorer.noaa.gov/about/>; however, none of these areas operate independently and it is only through leveraging resources internally and externally that we can truly achieve our mission. Since the inception of NOAA's exploration program in 2001, data management has been guided by the 2000 President's Panel Report recommendations which prioritized rapid and unrestricted data sharing as one of five critical exploration program components. More recently, Public Law 111–11 [Section XII Ocean Exploration] reinforced and expanded ocean exploration data management objectives, continuing to stress the importance of sharing unique exploration data and information to improve public understanding of the oceans, and for research and management purposes.

Telepresence satellite communication from the ship to shore brings the unknown ocean to the screens of both scientists and the general public in their homes, schools or offices in near real time. With technology constantly evolving it is important to address the needs of the shore-based scientists and public to maintain a high level of participation. We use voluntary surveys to identify the needs of users of data, best approaches to leverage expertise of shore-based participants for meaningful public engagement focused on ocean exploration. The four forms used to collect information are as follows: (1) Sailing Contact Information. This form is sent to the few scientists that directly sail on NOAA Ship *Okeanos Explorer*. The ship's operations and medical officers needs certain information such as: if a sailing individual has securely submitted their proper medical documents to NOAA's Office of Marine and Aviation Operations; if the person is up to date with required security

documents, such as a passport, if the ship is traveling to a foreign port; any dietary restrictions so that the person will be served food that is safe. Modifications to this form are largely to bring it into compliance with new NOAA policies (remove COVID-19 language, updated medical policies, image and likeness releases, etc.) and small content edits to reflect office changes in partnership status and ship sailing logistics. (2) *Okeanos Explorer* Participation Assessment. This voluntary form is sent to the scientists that sailed on any *Okeanos Explorer* cruise funded by NOAA's Office of Ocean Exploration and Research to record any feedback they wish to provide to the office about their experience. The office uses their feedback in assessments for improving the utility and experience of these scientific guests sailing on the *Okeanos Explorer*. Minimal edits to this form are made to bring the form into compliance with current policy. (3) EX Collaboration Tools Account Request Form. This voluntary form is sent to members of the marine scientific community at the beginning of a fiscal year to ask if members would like to participate in any of the upcoming cruises and to what degree, such as simply asking to be included in emailed updates or if they want to be on a direct line to the ship for remotely operated vehicle dive operations. Modifications to this form are adding clarifying information based on user feedback, making office updates (new engineering partner) and updating information for the current field season. (4) Science Lead Interest Solicitation. This voluntary form will be used to solicit interest from the scientific community to serve as a Science Lead on one of NOAA Ocean Exploration's expeditions. No edits have been made to this form since the last submission. The Citizen Scientist Form was previously part of this information collection. It is no longer utilized by the office and can be removed for the renewal of this information collection.

II. Method of Collection

Information is collected via online form.

III. Data

OMB Control Number: 0648-0748.
Form Number(s): None.
Type of Review: Regular submission [revision and extension of a current information collection].
Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal government.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 668 hours.

Estimated Total Annual Cost to Public: \$0 in recordkeeping or reporting costs.

Respondent's Obligation: Voluntary or required to obtain services or benefits.

Legal Authority: Public law 111-11, Section XII Ocean Exploration.

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. 2026-19086 Filed 9-16-26; 8:45 am]

BILLING CODE 3510-KD-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* October 17, 2026.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 250 E Street SW, Suite 3100, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: *For further information or to submit comments contact:* Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On August 6, 2026 (91 FR 50812) and August 13, 2026 (91 FR 52294), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 2540-01-329-8073—Parts Kit, Soft Top Troop Area Enclosure, Humvee, Tan

Contracting Activity: DEPT OF DEFENSE, DLA LAND AND MARITIME
NSN(s)—Product Name(s): 4910-01-211-2195—Drip Pan, Oil, Plastic, 3.5 gallons
Authorized Source of Supply: Central Association for the Blind and Visually Impaired, Utica, NY
Contracting Activity: DEPT OF DEFENSE, DLA LAND AND MARITIME
NSN(s)—Product Name(s):
 7920-01-620-3634—Scrubber, Tub/Shower, Non-Scratch, Light Blue
 7920-01-620-4373—Scrubber, Kitchen/Bath, Non-scratch, Dark Blue
Authorized Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

On August 6, 2026 the Commission proposed the products listed above for deletion from the Procurement List (PL) (91 FR 50812). The Commission received one public comment, with the commenter suggesting that prior to proposing products for PL deletion the Commission should evaluate various employment-related consequences for individuals who are blind or have a significant disability. However, because each of the products proposed for deletion are either no longer being produced by the nonprofit agency or the purchase demand is too low further evaluation is unnecessary. See 41 CFR 51-6.8(b).

NSN(s)—Product Name(s): 5120-01-032-6042—Handle, Jack
Authorized Source of Supply: Sunshine Services, Knoxville, TN
Contracting Activity: DEPT OF DEFENSE, DLA AVIATION
NSN(s)—Product Name(s):
 3895-01-135-2538—Handle Assembly
 3895-00-498-8343—Reeling Machine, Cable Hand
Authorized Source of Supply: Sunshine Services, Knoxville, TN
Contracting Activity: DEPT OF DEFENSE, DLA TROOP SUPPORT
NSN(s)—Product Name(s): 5975-00-985-6630—Strap, Tie Down, Electrical Component
Authorized Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: DEPT OF DEFENSE, DLA AVIATION

Service(s)

Service Type: Laundry Services
Mandatory For: USDA, National Centers for Animal Health (NCAH), Ames, IA, 1920 Dayton Avenue, Ames, IA
Authorized Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DEPARTMENT OF AGRICULTURE, USDA APHIS MRPBS
Service Type: Linen Rental Service
Mandatory For: Court Services and Offender Supervision Agency, CSOSA Reentry & Sanctions Center, Washington, DC, 633 Indiana Avenue NW, Room 892C, Washington, DC
Authorized Source of Supply: Louise W.

Eggleston Center, Inc., Norfolk, VA
Contracting Activity: COURT SERVICES AND OFFENDER SUPERVISION AGENCY
Service Type: Telephone Switchboard Operations
Mandatory For: Department of Veterans Affairs, Erie VA Medical Center, Erie, PA, 135 East 38th Street, Erie, PA
Authorized Source of Supply: VIA VISUALLY IMPAIRED ADVANCEMENT, Buffalo, NY
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 244-NETWORK CONTRACT OFC 4 (00244)

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-19046 Filed 9-16-26; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: October 17, 2026.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 250 E Street SW, Suite 3100, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51-5.3(b), the Committee intends to add the services requirements listed below to the Procurement List as a mandatory purchase only for the contracting activities at the locations listed with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding these services to the

Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Janitorial Service
Mandatory For: Defense Logistics Agency, DLA Distribution Red River Texas, Red River Army Depot, Texarkana, TX, 50 E Entrance Ave., Texarkana, TX
Authorized Source of Supply: Rising Star Resource Development Corporation, Dallas, TX
Contracting Activity: DEPT OF DEFENSE, DLA DISTRIBUTION

Service(s)

Service Type: Custodial Service
Mandatory For: Department of Homeland Security, Federal Law Enforcement Training Center, Buildings 221, 830, 850, 851 A and B, Brunswick, GA
Authorized Source of Supply: Goodwill Industries of the Coastal Empire, Inc., Savannah, GA
Contracting Activity: DHS FLETC, Federal Law Enforcement Training Center, GA, Contract Office, Glynco, GA

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Warehousing & Distribution Service
Mandatory For: US Department of Agriculture, Food and Nutrition Service, Alexandria, VA, 1320 Braddock Place, Alexandria, VA
Authorized Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: AGRICULTURE, DEPARTMENT OF, USDA FNS

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-19047 Filed 9-16-26; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project (PDP); Defense Health Agency (DHA) Research and Development (R&D) Activity, Fort Detrick, Frederick, Maryland

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of approval of demonstration project final plan.

SUMMARY: This serves as notice of the adoption of a STRL PDP plan and additional flexibilities by the DHA R&D, a DoD (referred to herein as “DoW”) STRL. The DHA R&D is an STRL composed of medical research organizations that were formerly components of the U.S. Army Medical Research and Development Command (USAMRDC), a successor to the U.S. Army Medical Research and Materiel Command (USAMRMC). The DHA R&D will adopt the PDP plan of the USAMRDC at the **Federal Register** issue of March 3, 1998, with some modifications. In addition, the DHA R&D proposes to adopt certain personnel flexibilities available to all DoW STRLs.

DATES: This demonstration project may be implemented at the DHA R&D no earlier than September 17, 2026.

FOR FURTHER INFORMATION CONTACT:

- *DHA R&D:* Linda Krout, linda.j.krout.civ@health.mil, Civilian Personnel Chief, 505 Scott Street, Fort Detrick, Frederick, MD 21702–5000, phone 301–619–7276.
- *Office of the Under Secretary of War for Research and Engineering:* Dr. Richard T. LaVoie, richard.t.lavoie2.civ@mail.mil, Deputy Assistant Secretary of War, Science and Technology Foundations, 4800 Mark Center Drive, Suite 17E08, Alexandria, VA 22350–3600, phone 703–545–9457.

SUPPLEMENTARY INFORMATION: Pursuant to section 4121 of Title 10, United States Code (U.S.C.), the Secretary of Defense is authorized to conduct PDPs at laboratories designated as DoW STRLs. Through the USW(R&E), the Secretary exercises the authorities of the Director, Office of Personnel Management (OPM), under 5 U.S.C. 4703 to conduct PDPs at DoW laboratories designated as STRLs. The DoW STRLs must have an approved PDP plan published in a **Federal Register** Notice (FRN) and fulfill any collective bargaining obligations before implementing the demonstration project or adopting the flexibilities available to other DoW STRL demonstration projects. In implementing this plan, the DHA R&D will establish internal operating procedures as appropriate.

1. Background

A PDP was implemented at the USAMRMC in accordance with the plan at 63 FR 10440 (March 3, 1998). In 2019, the USAMRMC was redesignated as the USAMRDC and the PDP notice at 63 FR 10440 was updated through a minor modification on August 30, 2019, to

reflect this change. On May 5, 2024, following the transfer of USAMRDC components to the DHA R&D, the Deputy Assistant Secretary of War for Science and Technology Foundations designated the DHA R&D as a DoW STRL. The DHA R&D has implemented the USAMRDC PDP authorities for the DHA R&D components that were formerly subordinate components of the USAMRDC. This notice implements the PDP for all DHA R&D components by adopting the USAMRDC PDP plan and includes updates, modifications, and adoptions of other flexibilities available to all DoW STRLs.

The purpose of the demonstration project is to demonstrate that the effectiveness of DoW organizations can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system.

2. Summary of Comments

There were 17 comments received from commenters regarding the DHA PDP, 89 FR 89621, dated November 13, 2024. The following is a summary of comments received and a response to each.

Comment: For the Supervisory Bonus (SB), must they have completed a supervisory probationary period to be eligible? Can a supervisor get a SB, pro-rated, other than the beginning of the appraisal period to be used as a recruitment incentive?

Response: No changes to the notice were made based on this question. Eligibility for the SB will be described in the internal operating procedure. An employee may receive a pro-rated SB as a recruitment incentive for filling a supervisory position. To maintain the SB upon initial receipt, and thereafter, an employee must successfully complete the one-year probationary period and required supervisory training.

Comment: There are Special Salary Rates (SSR) that far exceed the with locality amount for certain geographic locations/Occupational Classification Code series. How will this apply to converting into demo if the SSR is higher than the top of the band?

Response: No changes to the notice were made based on this question. The R&D demonstration project does not recognize SSR. However, supplemental pay may be granted to address the difference in salary between the demonstration project salary and the SSR.

Comment: For contingent employees appointment Authority, is it still

relevant to get commander approval for the 6th year when a 10-year term authority is available?

Response: No changes to the notice were made based on this question. This will be addressed in the internal operating procedure and includes implementing instructions for the Flexible Length and Renewable Term Technical Appointments.

Comment: Reduction in Force (RIF) rules in **Federal Register** Volume 63, No. 41, dated March 3, 1998, are superseded by 87 FR 58334, dated September 26, 2022.

Response: No changes to the notice were made based on this question. The RIF rules in 63 FR 10440, dated March 3, 1998, were superseded by those published in 87 FR 58334 dated Sept 26, 2022. The RIF rules as they apply to the DHA R&D demonstration project will be addressed in the internal operating procedure.

Comment: Is DoD still limited to 40 pay band V positions?

Response: No changes to the notice were made based on this question. The original limit of 40 pay band V positions was set by the OPM. Title 10 U.S.C. 4091 and 79 FR 43724, dated July 28, 2014, authorized the establishment of a new category of positions entitled Senior Scientific Technical Managers (SSTM). For the DHA R&D, this category is identified as the DB–05 pay band. The total number of authorized DB–05 positions cannot exceed two percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made. If the two percent does not equate to a whole number, the R&D will round down to the next lower number.

Comment: Under the performance section, does the employee still receive retention years of credit for RIF?

Response: No changes to the notice were made based on this question. The rules for RIF will be outlined in the Internal Operating Procedures, which will mirror the MRDC RIF IOP #7 and allow the provision of RIF as described in 87 FR 58334.

Comment: For Expanded Development Opportunity, based on new RIF rules, retention years credit for RIF no longer applies, is this correct?

Response: No changes to the notice were made based on this question. Yes, this is correct.

Comment: Given the age of the MRDC FRN, is the Fair Labor Standards Act (FLSA) designations still accurate as identified on Figure 1–Occupational Families and Pay Bands?

Response: No changes to the notice were made based on this question. The FLSA designations listed in the FRN are a guide and should not be used as the official designation. The duties of each position description are reviewed to make the final FLSA determination.

Comment: Will the DB05 authority still be exercised at the DA level? Are high grade controls still in place

Response: No changes to the notice were made based on this question. The SSTM, DB-05, authority are authorized in 10 U.S.C. 4091 and 79 FR 43722. The number of DB-05 positions authorized is based on two percent of the number of scientists and engineers employed at the laboratory at the close of the last fiscal year.

Comment: Voluntary Separation Incentive Payment (VSIP)—authority has not been delegated to sub activity Commanders/Directors; can it be?

Response: No changes to the notice were made based on this question. The VSIP authority will be delegated accordingly by the agency. No changes to the Notice were made based on this question.

Comment: What does first line management mean? Does it mean the first line supervisor?

Response: No changes to the notice were made based on this question. Yes, first line management means the first line supervisor.

Comment: Recommend rewriting Supervisory Probation period because as written it's confusing on how long the probationary period are.

Response: The supervisory probationary period has been re-written to clarify the one-year requirement for a supervisory probationary period.

Comment: A score range of 85 to 100 or an "A" rating is quite broad when considering academic-type rating. Can the cumulative scores for each rating be adjusted and the Alpha character changed to a numerical level? Example: Instead of A superior = 85–100, make it a level 5 outstanding = 90–100?

Response: No changes to the notice were made based on this question. After the implementation of the DHA R&D STRL, the recommendation to adjust the rating scores will be further explored and if necessary, a minor modification to this FRN will be accomplished.

Comment: What is DA Form 374? Is it still applicable under DHA? Does Army still use it?

Response: No changes to the notice were made based on this question. This form is obsolete and no longer used.

Comment: Recommend references to the Civilian Personnel Advisory Center (CPAC)/Civilian Personnel Operations Center (CPOC) be updated to reflect

Civilian Human Resources Service Center (CHRSC) now that the titling has changed.

Response: References to CPAC/CPOC were updated to the new name of CHRSC, Civilian Human Resources Service Center.

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I. Executive Summary

This serves as adoption of the USAMRDC STRL PDP plan, including the following modifications approved pursuant to DoD Instruction 3201.05: minor modification to administrative occupational family, DJ-03 and DJ-04 band structure of occupational series 1102 only (February 3, 2011); minor modification to pay for performance payment timeframe (January 5, 2018); minor modification to participating occupational series (November 28, 2022). Upon implementation, the DHA R&D will also utilize the flexibilities published in the following FRNs and any future omnibus flexibilities that are available to all DoW STRLs:

- 89 FR 44648 (May 21, 2024)
- 88 FR 10874 (February 22, 2023)
- 87 FR 72462 (November 25, 2022)
- 87 FR 58334 (September 26, 2022)
- 87 FR 40200 (July 6, 2022)
- 85 FR 78829 (December 7, 2020)
- 85 FR 5639 (January 31, 2020)
- 82 FR 43339 (September 15, 2017)
- 82 FR 29280 (June 28, 2017)
- 79 FR 43722 (July 28, 2014)
- 78 FR 29335 (May 20, 2013)

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoW laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system.

B. Participating Organization

This demonstration project will cover approximately 1,224 DHA R&D positions. Approximately 59 percent of covered positions are at the following DHA R&D organizations located at Fort Detrick, Maryland: DHA R&D, Telemedicine and Advanced Technology Research and Medical Research Institute of Infectious Disease. The remaining positions are at the following sites: Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, Maryland; Walter Reed Institute of Army Research, Forest Glen Annex, Silver Spring, Maryland; Institute of Surgical Research and the Burn Center Directorate, Joint Base San Antonio, Texas. These positions transferred to the DHA R&D from the U.S. Army Medical Research and USAMRDC. The DHA R&D has successfully implemented the USAMRDC PDP authorities for the DHA R&D components that were formerly subordinate organizations of USAMRDC. Based on experience gained and following careful consideration, the DHA R&D has determined to conduct a PDP for all DHA R&D components by adopting the USAMRDC PDP plan and other flexibilities available to all DoW STRLs.

C. Participating Employees

The demonstration project includes appropriated funded civilian employees in the competitive and excepted service (to include non-citizens hired in the absence of qualified citizens) paid under the General Schedule (GS) pay system and Interns assigned to the STRL. The project plan does not cover Senior Executive Service employees, Scientific and Professional employees, and Federal Wage System employees Personnel added to the DHA R&D in like positions, either through appointment, promotion, reassignment, change to lower grade or where their functions and positions have been transferred into the DHA R&D, will be converted to the demonstration project.

D. Labor Participation

The DHA R&D will fulfill its obligations to consult and/or negotiate with the designated union as appropriate and applicable in accordance with 5 U.S.C. 4703(f) and 7117.

E. Project Design

In October 1994, the USAMRMC began development of the specifics of this personnel demonstration proposal. A PDP Office was established, and administrative support added in April 1995. Briefings of the proposal were initially conducted for the workforce at every participating subordinate activity with subsequent briefings provided upon request by Commanders/Directors.

Status of the project was provided to subordinate activity Commanders/Directors for dissemination to all employees. An electronic mail address was established in the Fall of 1994 and made available to all employees and managers for the purpose of expressing opinions and/or obtaining specific information about the project. Review of the proposal and input by the U.S. Army Medical Command (MEDCOM), USAMRMC workforce, as well as critical and extensive reviews by Headquarters Department of the Army, the Office of the Secretary of War, and OPM since April 1995, led to the publication of the proposal in the March 12, 1997, **Federal Register**. Subsequently, Public Hearings were held, and comments from interested parties and the workforce were reviewed and considered, culminating in the publication of the final USAMRMC demonstration project plan.

In October 2018, USAMRMC was realigned from MEDCOM to the U.S. Army Materiel Command. On June 12, 2019, the USAMRMC was renamed to the USAMRDC. During the summer of 2019, USAMRDC began reporting to the Army Futures Command (AFC). On December 22, 2019, USAMRDC personnel were realigned to the AFC. On May 5, 2024, USAMRDC personnel were transferred from AFC to the DHA R&D with the exception of three subordinate activities, U.S. Army Research Institute of Environmental Medicine and U.S. Army Aeromedical Research Laboratory, and U.S. Army Medical Materiel Development Activity Program Manager Soldier Medical Devices, which remained with AFC.

F. Personnel Management Board

The DHA R&D intends to establish an appropriate balance between the personnel management authority/accountability delegated to subordinate

activity Commanders/Directors and R&D management/oversight responsibilities by establishing a Personnel Management Board (PMB). The Chairperson and members will be appointed by the Director R&D. The PMB will serve to provide oversight, policy, guidelines, corrective action, and evaluation as subordinate activity Commanders/Directors execute the following:

1. Formulate and execute the civilian pay budget;
2. Determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;
3. Administer funds allocation to pay pool managers;
4. Determine hiring and promotion salaries as well as exceptions to pay-for-performance salary increases;
5. Provide guidance to pay pool managers;
6. Manage the awards pools;
7. Select participants for the Expanded Developmental Opportunities Program, long term training, and any special developmental assignments;
8. Adhere to guidelines concerning the promotion of employees into salary ranges designated "high grades";
9. Ensure in-house budget neutrality to include tracking of average salaries, FTEs, etc.;
10. Contact the PMB designee for problem resolution, recommending changes in policy/procedure, etc.; and
11. Ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project.

III. Personnel System Changes

A. Broadbanding

Occupational Families

Occupations at the DHA R&D will be grouped into occupational families. Occupations will be grouped according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at DoW Laboratories and in the private sector will also be considered. The current occupations and grades have been examined, and their characteristics and distribution have served as guidelines in the development of the four occupational families described below. Positions included in each occupational family are listed in Appendix A.

1. *Engineers and Scientists (E&S)*. This occupational family includes all technical professional positions, such as positions in the biological, physical and social sciences, medical, veterinary,

mathematical, and engineering fields. Ordinarily, specific course work or educational degrees are required for these occupations.

2. *E&S Technicians*. This occupational family contains specialized functions in fields that provide direct technical support to the scientific/engineering effort. Positions in these occupations may or may not require completion of formal college course work. However, training and skills in the various specialties are generally required.

3. *Administrative*. This occupational family contains specialized functions in such fields as management analysis, accounting, budgeting, contracting, purchasing, legal, business and industry, library, quality assurance, and supply. Special skills in administrative fields or special degrees are required.

4. *General Support*. This occupational family is composed of positions requiring special skills and knowledge, such as typing, shorthand, or office automation skills, and job-related experience. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Support functions include positions such as secretary, mail clerk, medical clerk, accounting technician and supply technician.

Pay Bands

Each occupational family will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all occupational families. Each occupational family will be divided into three to five pay bands, each pay band covering the same pay range now covered by one or more grades. A salary overlap, like the current overlap between GS grades, will be maintained.

Ordinarily, an individual will be hired at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance level within a band. The DHA R&D broadbanding plan is expanded to create a Pay Band V of the Engineers and Scientists Occupational Family. This pay band is designed for Senior Scientific Technical Managers (79 FR 43722). Current OPM guidelines of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of DHA R&D. The SES designation is appropriate for executive level managerial positions whose

classification exceeds the GS-15 grade level. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are reserved for bench research scientists and engineers; these positions require a very high level of technical expertise, and they have little or no supervisory responsibility.

The DHA R&D currently has many positions, typically division/directorate chiefs, which have characteristics of both SES and ST classifications. Most division/directorate chiefs in DHA R&D are responsible for supervising other GS-15 positions, including branch chiefs, non-supervisory researcher scientists and engineers, and possibly ST positions. Most division/directorate chief positions are classified at the GS-15 level, although their technical expertise warrants classification beyond GS-15. Because of their management responsibilities, these individuals are excluded from the ST system. Because of management considerations, they cannot be placed in the SES. Management considers the primary requirement for division/directorate chiefs to be knowledge of, and expertise in, the specific scientific and technology areas related to the mission of their divisions/directorates. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders, who possess primarily scientific/engineering credentials and are considered experts in their field. However, they must also possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might

compare favorably with ST criteria, classification of these positions as STs is not an option, because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

The purpose of Pay Band V (which will reinforce the equal pay for equal work principle) is to solve a critical classification problem. It will also contribute to an SES "corporate culture" by excluding from the SES positions for which technical expertise is paramount. Pay Band V proposes to overcome the difficulties identified above by creating a new category of positions, the Senior Scientific Technical Manager, which has both scientific/technical expertise and full managerial and supervisory authority. Current GS-15 division/directorate chiefs will convert into the demonstration project at Pay Band IV. After conversion, they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. Other positions possibly meeting criteria for classification to Pay Band V will be reviewed on a case-by-case basis. The salary range is a minimum of 115 percent of the minimum rate of basic pay for GS-15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (EX-4). Vacant positions in Pay Band V will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities. Panels will be created to assist in filling Pay Band V positions. Panel members will be selected from a pool of current DHA R&D senior military and

SES members, ST employees, and later those in Pay Band V, and the unit Commander to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS-15 level.

The pay bands for the occupational families and how they relate to the current GS grades are shown in Figure 1. Application of the FLSA within each pay band is also shown in Figure 1. It should be noted that for recruitment and retention reasons for the occupational series 1102 and 1105, the DJ-03 pay band range will be GS-11 through GS-13, and DJ-04 is GS-14. This pay-band concept has the following advantages:

1. It reduces the number of classification decisions required during an employee's career.
2. It simplifies the classification decision-making process and paperwork. A pay band covers a larger scope of work than a grade and thus will be defined in shorter and simpler language.
3. It supports delegation of classification authority to line managers.
4. It provides a broader range of performance-related pay for each level. In many cases, employees whose pay would have been frozen at the top step of a grade will now have more potential for upward movement in the broader pay band.
5. It prevents the progression of low performers through a pay band by mere longevity, since job performance serves as the basis for determining pay.

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Figure 1. —Occupational Families and Pay Bands

Occupational Families	Corresponding GS grades															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Engineers & Scientists (DB)	BANDS															
	I (N)				II (*)								III (E)		IV (E)	V (E)
E&S Technicians (DE)	I (N)				II (*)				III (*)			IV (E)				
Administrative (DJ)	I (N)				II (*)						III (E)		IV (E)		V (E)	
General Support (DK)	I (N)				II (*)				III (*)							

FLSA CODES: N—Nonexempt E—Exempt *—Nonexempt or Exempt

Note: Although typical exemption status under the various pay bands is shown in the above table, actual

FLSA exemption determinations are made on a case-by-case basis.

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FLSA

The FLSA exemption and non-exemption determinations will be made consistent with criteria found in 5 CFR part 551. Supervisors with classification authority will make the determinations on a case-by-case basis with reference to documentation in the operating procedures manual and the advice and assistance of the CHRSC. The generic position description benchmark will not be the sole basis for the determination. The basis for exemption/non-exemption will be documented and annotated on

each description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. The basis for determinations will be reviewed as a part of the performance review process and when salary adjustments are warranted. Changes will be documented and provided to the CHRSC, as appropriate.

Simplified Assignment Process

Today's environment of rightsizing and workforce transition mandates that the DHA R&D have maximum flexibility to assign duties and responsibilities to

individuals. Broad banding can be used to address this need. As a result of the assignment to a particular level descriptor, the organization will have maximum flexibility to assign an employee with no change in basic pay, within broad descriptions consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or

coverage of the current level descriptor, or benchmark position description.

Such assignments within the coverage of the generic descriptors are accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family, or to a pay band in a different occupational family, which results in an increase in the employee's salary. Progression within a pay band is based upon performance pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction-in-force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) Impact of person on the job, accretion of duties, or Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide or similar guides) promotions.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

Link Between Promotion and Performance

To be promoted competitively or noncompetitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of "B" or better (see Performance Evaluation) or equivalent under a different performance management system.

B. Classification

Introduction

The objectives of the classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers. All positions listed in Appendix A will be in the classification structure. Provisions will be made for including other occupations as employment requirements change in response to changing missions and technical programs.

Occupational Series

The present GS classification system has over 400 occupations (also called series), which are divided into 22 groups. The occupational series will be maintained. New series, established by OPM, may be added as needed to reflect new occupations in the workforce. Appendix A lists the occupational series currently represented at the DHA R&D by occupational family.

Classification Standards

The DHA R&D will use a classification system that is used by the USAMRDC STRL personnel demonstration project. The present classification standards will be used to create local benchmark position descriptions for each pay band, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each pay band. There will be at least one benchmark position description for each pay band. A supervisory benchmark position description will be added to those pay bands that include supervisory employees. Present titles and series will continue to be used to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed specialty codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

Position Descriptions and Classification Process

The R&D Director will have delegated classification authority and will redelegate this authority to subordinate activity Commanders/Directors for redelegation to activity managers as appropriate. New position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, the functional code, the specialty code, pay band level, and the appropriate acquisition codes. Specialty codes will be developed by Subject Matter Experts to identify the special nature of work performed. Functional codes are those currently found in the OPM Introduction to the Classification Standards which defines certain kinds of activities, e.g., Research, Development, Test and Evaluation, etc., and covers E&S.

Classification Appeals

An employee may appeal the occupational series or pay band level of his or her position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoW appellate level. If an employee is not satisfied with the DoW response, he or she may then appeal to the OPM, only after DoW has rendered a decision under the provisions of this demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under Title 5 apply. An employee requesting a classification decision that would exceed the equivalent of a GS-15 level may not submit the appeal to OPM.

An employee may not appeal the assignment of the occupational series to an occupational family; the accuracy of the occupational family; the title of a position; the accuracy of the position description; the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure. The evaluation of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CHRSC providing personnel services and will

include copies of appropriate demonstration project criteria.

C. Pay-for-Performance Management System

Performance Evaluation

Introduction

The performance appraisal system will link compensation to performance through annual performance evaluations and performance ratings. The performance appraisal system will allow optional use of peer evaluation input and/or input from subordinates whenever appropriate. The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. Details of the system may be found in the implementation instructions.

Performance Objectives

Performance objectives are statements of job responsibilities based on the work unit's mission, goals, and supplemental benchmark position descriptions. Employees and supervisors will jointly develop performance objectives which will reflect the types of duties and responsibilities expected at the respective pay level. Absent agreement between employees and supervisors, final authority to establish performance objectives and element weights rests with management. The performance objectives, representing joint efforts of employees and their rating chains, should be in place within 30 days from the beginning of each rating period.

Performance Elements

Performance elements and rating forms have been designed to implement a scoring and rating system. The performance evaluation system will be based on critical performance elements defined in Appendix C. All elements in the performance evaluation system are critical. Non-critical elements will not be used. Each performance element is assigned a weight between a specified range. The total weight of all elements in a performance plan is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment. These weights will be developed along with employee performance objectives.

Mid-Year Review

A mid-year review between a supervisor and employee will be held to determine whether objectives are being met and whether performance objectives should be modified to reflect changes in planning, workload, and resource allocation. Additional reviews may be held throughout the rating cycle; to include possible changes in assigned weights, if necessary.

Performance Appraisal

A performance appraisal is scheduled for the final weeks of the annual performance cycle. A special performance appraisal may be conducted at any time prior to the final weeks of the performance cycle if the employee has been on approved standards for a minimum of 60 days. Other instances that would warrant a special performance appraisal will be identified in the Internal Operating Procedures. The performance appraisal process brings supervisors and employees together for formal discussions on performance and results in (1) written appraisals, (2) performance ratings, (3) performance pay increases and/or bonuses, (4) cash awards, and (5) other individual performance-related actions, as appropriate. A performance appraisal will consist of two meetings held between employee and supervisor: the performance review meeting and the evaluation feedback meeting.

Performance Review Meeting Between Employee and Supervisor

The review meeting is to discuss job performance and accomplishments. Supervisors do not assign scores, ratings, pay increases, or awards at this meeting. The supervisor notifies the employee of the review meeting in time to allow the employee to prepare a list of accomplishments. Employees will be given an opportunity at the meeting to give a personal performance assessment and describe accomplishments. The supervisor and employee discuss job performance and accomplishments in relation to the performance elements, objectives, and planned activities established in the performance plan.

Evaluation Feedback Meeting Between Employee and Supervisor

In this second meeting between employee and supervisor, the supervisor informs the employee of management's appraisal of the employee's performance, the employee's performance score and rating, and any recommended related pay increase, bonus, award, or other personnel action. During this second meeting, the supervisor and employee will discuss and document performance objectives for the next rating period.

Performance Scores

Selection of the weighted points to assign to an employee's performance is assisted by use of benchmark performance standards (Appendix D). Each benchmark performance standard describes the level of performance associated with a particular point on a rating scale. Supervisors may add supplemental standards to the performance plans of the employees they supervise to further elaborate the benchmark performance standards. The overall score is the sum of the individual element scores. Employees will receive an academic-type rating of "A," "B," "C," or "F" depending upon the percentage of goal attainment and overall cumulative score. The academic-type ratings will be used to determine pay or bonus values. These summary ratings are representative of Pattern E in Summary Level Chart in 5 CFR 430.208(d)(1). This rating will become the rating of record, and

(1) Employees rated "B" or higher will be eligible to receive performance-based pay increases and/or bonuses; and

(2) Employees rated "F" will not receive the general increase or be eligible to receive performance-based pay increases and/or bonuses. A rating of "A" will be assigned for cumulative scores of 85 to 100 points, "B" for cumulative scores of 70 through 84, and "C" for cumulative scores of 50 through 69. An overall rating of "F" indicates failure to perform at the 50 percent level for any one of the assigned weighted elements. (In such a case, even though the cumulative score may exceed 49, the employee will nonetheless receive an overall rating of "F." NOTE: An "F" constitutes an unacceptable rating).

Figure 1. — Occupational Families and Pay Bands

Rating	Compensation (shares)	General increase
“A” - Superior	2	YES
“B” - Exceptional	1	YES
“C” - Successful	0	YES
“F” - Failure	0	NO

¹ Employees rated “B” or higher will be eligible to receive performance-based pay increases and/or bonuses.

² The maximum pay rate for pay band V cannot exceed rate for ES-4. Therefore, employees at or near the top pay band V may not receive the full general increase if it is not authorized for SES employees.

Performance Based Actions

The DHA R&D will implement a two-step process to deal with poor performers. This process may lead to involuntary separation if the employee receives a score of less than 50 percent of the points for any weighted element. The process will begin with the acknowledgement that an employee’s performance is unacceptable (any element that would be rated at less than the 50 percent level of its assigned benchmark rate). The two steps are as follows: (1) Performance Improvement Plan (PIP), and (2) either change in assignment (optional), reduction in pay or grade (optional) or separation. When the employee is determined to be performing below the 50 percent level for any element, the supervisor and the employee will develop a structured PIP that will be monitored for a reasonable period of time. If the employee fails to improve during the PIP, the employee will be given notice of proposed appropriate action. The activity may consider a change in assignment or reduction in pay or grade as opposed to removal if the mission, organizational structure and available resources warrant such action. Separated employees have due process recourse.

Note: Performance based adverse actions may be taken under 5 U.S.C. chapter 43 (Performance Appraisal) or chapter 75 (Adverse Actions).

If a PIP ends prior to the end of the annual performance cycle and the

employee’s performance improves to the 50 percent or above level in all assigned elements, the employee is appraised again at the end of the annual performance cycle.

If, in conjunction with the completion of the PIP, the employee attains an annual rating of “C” or higher, they will receive the annual general increase. In addition, employees attaining an annual rating of “B” or higher will be eligible for an increase to base-pay and/or bonus.

If a PIP ends after the end of the annual performance cycle and the employee’s performance has improved to the 50 percent or above level in all assigned elements, employment continues, but no retroactive annual general increase, performance base pay increase or performance bonus is granted for that performance cycle. No new appraisal will be created to replace the failing rating, and the Defense Civilian Personnel Data System (DCPDS) will not be updated to change the rating from “F” to “C” or higher. Upon improvement, the employee will be placed on a performance plan for the next rating cycle, which will begin on July 1 through the end of the rating cycle (June 30).

Employee Relations

Employees covered by the project will be evaluated under a performance evaluation system that affords administrative grievance rights. The

DHA R&D will maintain the substantive and procedural appeal rights currently afforded when taking action for misconduct and poor performance.

Awards

The DHA R&D currently has an extensive awards program consisting of both internal and external awards. While not linked to the pay-for-performance system, awards will continue to be given for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off, and may be modified or expanded as appropriate. Major Command and DoW awards and other honorary noncash awards will be retained. In an effort to foster and encourage teamwork among its employees, a Commander/Director may allocate a sum of money to a team for outstanding completion of a special task or significant achievement, and the team may decide the individual distribution of the total dollars among themselves.

Pay Administration Introduction

The objective is to establish a pay system that will improve the ability of the DHA R&D to attract and retain quality employees. The system will be a pay-for-performance system and, will result in a distribution of performance pay resources based upon individual performance.

Pay-for-Performance

The DHA R&D will use a simplified performance appraisal system that will permit both the supervisor and the employee to focus on quality of the work. This system will permit the manager/supervisor to base compensation on performance or value added to the goal of the organization rather than on longevity and risk aversion. This system will also allow managers to withhold pay increases from nonperformers, thereby giving the nonperformers the incentive to improve performance or leave government service. Pay-for-performance has two components: Performance pay increases (i.e. base pay increases) and/or bonuses. All covered employees will be given the full amount of locality pay adjustments (as applicable) when they occur, regardless of performance. The funding for performance pay increases and/or bonuses is composed of money previously available for within-grade increases, quality step increases, and promotions from one grade to another when the grades are now in the same pay band.

Performance Pay Pool

The funding in the performance pay pool will be used for base pay increases and/or performance bonus pay. The payouts made to employees from the performance pay pool may be a mix of base pay increases, subject to the pay ceiling in the pay bands, and bonus payments. The Headquarters (HQ), DHA R&D Comptroller, in conjunction with each subordinate activity Commander/Director, will calculate the total performance pay pool and allocate pay pools to subordinate activities. Each subordinate activity Commander/Director will allocate pay pools to organizational units or teams as appropriate.

Performance Pay Increases and/or Performance Bonuses

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager assigns pay increases and/or bonuses to individuals on the basis of an academic-type rating, the value of the performance pay pool resources available, and the individual's current basic rate of pay within a given pay band. A pay pool manager may request approval from the Commander/Director or his/her designee to grant a higher performance pay increase/performance bonus than is generated by the compensation formula to recognize an employee's extraordinary achievement (also known as payout above) or to

provide accelerated compensation for local interns.

A performance payout will be initially calculated for each individual based upon a pay pool assignment that will be composed of monies outlined previously. For illustration purposes, approximately 2.4 percent of the value of the combined basic rates of pay of the assigned employees will be used. A share will be calculated so that a pay pool manager will not exceed the resources that are available in the pay pool. The performance payout for an individual will be determined as follows:

Individual Performance Payout =	$\frac{\text{Pool Value} * \text{SAL}_i * N_i}{\text{SUM}(\text{SAL}_j * N_j); j=1 \text{ to } n}$
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Where:

Pool Value = $0.024 * \text{SUM}(\text{SAL}_k); K = 1 \text{ to } n$

n = number of employees in pay pool

N = Number of Shares (0–2) earned by an employee based on their performance rating

SAL = An individual's basic rate of pay

SUM = The summation of the entities in

parenthesis over the range indicated

i = individual

To illustrate the formula, the basic rates of pay of the 10 employees in a pay pool, who each earn \$50,000 per year, total to \$500,000. The employees earned a total of 15 shares based on their ratings (5 individuals earned an "A" rating, and 5 individuals earned a "B" rating). The pay pool value is then 2.4 percent of the sum of \$500,000, or \$12,000. The individual performance payout being determined is for an individual who earns \$50,000 per year and receives an "A" on the appraisal, thus earning 2 shares. Using the formula, the individual performance payout is calculated by multiplying the pay pool value, \$12,000, by the individual basic rate of pay, \$50,000, by the number of shares earned, 2. This product is divided by the sum of the products of the individual basic rates of pay times the number of shares earned, or 750,000. The resulting individual performance payout is \$1,600 for the year.

An annual performance base pay increase could be all, none, or part of the compensation formula depending on the current basic rate of pay of the employee. Annual performance base pay increases will be limited to the difference between the particular band pay cap and the employee's current basic rate of pay, or total dollar value of shares, whichever is less, with the balance converted to a performance

bonus. This means that employees whose basic rates of pay have reached the upper limits of a particular pay band will receive most performance compensation as a performance bonus. Cash bonuses will not become a part of the employee's basic rate of pay. Employees receiving retained rates are subject to special rules governing basic pay adjustments. An employee receiving a retained rate whose performance rating is "F" at the time of a general pay increase will receive no increase in the retained rate. All other employees receiving a retained rate will receive a general pay increase equal to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position.

Payout Above

A pay pool manager may request approval from the Commander/Director or his/her designee to grant a higher performance pay increase/performance bonus than is generated by the compensation formula to recognize an employee's extraordinary achievement (also known as payout above) or to provide accelerated compensation for local interns. The payout above will be calculated outside the mass pay process. If a payout above is awarded the payout may be paid as a base pay increase, subject to the pay ceiling in the pay bands, and/or a bonus.

Supervisory Bonus

Supervisory bonuses of up to 10 percent of the basic rate of pay may be paid at the discretion of Commanders/Directors to supervisors with employees in the same pay band. In exceptional cases (approved by HQ, DHA R&D), supervisors who do not have employees in the same pay band may be compensated up to five percent of basic rate of pay. Employees who qualify for the bonus include supervisors in all occupational families with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide. The supervisory bonus is to recognize supervisory responsibilities required of supervisors most often receiving the same pay as non-supervisory subordinates. There are two situations in which a supervisory bonus may be warranted:

1. Supervisors may be granted up to 10 percent of the basic rate of pay if they supervise employees within the same pay band, or

2. Up to five percent of the basic rate of pay for those supervising employees in lower or other pay bands.

Note: Pay band V employees in the E&S occupational family are excluded. Bonuses, which must be negotiated annually, will not

be treated as basic pay and are not a part of the performance pay pool.

Because the bonus is paid at the beginning of the appraisal period, if the individual leaves a supervisory position or is removed from supervisory responsibilities (unless affected through RIF action), the prorated portion of the bonus for the non-supervisory portion of the performance year will be recovered as a debt due the Government. Before any supervisory bonus is paid, the supervisor (employee) will sign an agreement to make any required repayment.

Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay paid in Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the GS system. Pay rates for the various pay bands will be directly keyed to the GS rates, except the maximum rate for pay band V of the engineer and scientist occupational family which cannot exceed EX4. Basic pay will be limited to the maximum rates payable for each pay band, except for retained rates as previously described.

Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher pay band will be six percent or the minimum rate of the new pay band. The maximum amount of pay increase upon promotion will not exceed \$10,000 or the minimum rate of the new pay band. When a temporary promotion is terminated, the employee's pay entitlements will be redetermined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by DHA R&D. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

Placement in a Lower Pay Band

Employees who receive 50 percent or less of an assigned benchmark score in any element or who are on a performance improvement plan at the time pay determinations are made, do not receive performance payouts or the general increase. This action may result in a base salary that is identified in a lower pay band. This occurs because the minimum rates of basic pay in a pay band increase as the result of the general increase (5 U.S.C. 5303). This situation,

(a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

D. Hiring and Appointment Authorities

Hiring Authority

A candidate's basic eligibility will be determined using OPM's Qualification Standards Handbook of GS Positions. Candidates must meet the minimum standards for entry into the pay band. For example, if the pay band includes positions in grades GS-5 and GS-7, the candidates must meet the qualifications for positions at GS-5 level. Specific experience/education required will be determined based on whether a position to be filled is at the lower or higher end of the band. Selective placement factors may be established when determined to be critical to successful job performance. These factors must be communicated to all candidates for specific vacancies and must be met for basic eligibility. As a general rule, appointments will be made at the entry level of the pay band and pay will be set at the lowest level in a pay band.

Appointments made above the minimum level will be based upon superior qualifications of the candidate. A candidate appointed toward the higher end of a pay band should have qualifications approaching the lowest GS grade incorporated into the next higher pay band. For example, a person appointed at the higher end of Pay Band II in the E&S Occupational Family would have education, experience, or a combination of the two, approaching the qualifications of the GS-13 level, which is the lowest GS grade incorporated into Pay Band III.

Appointment Authority

Under the demonstration project, there will continue to be career, and career conditional appointments. These appointments will use existing authorities and entitlements. Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements will be filled using a Contingent Employee appointment authority.

Employees hired for more than one year, under the contingent employee appointment authority are given term appointments in the competitive service for no longer than five years. The DHA R&D Commander is authorized to extend a contingent appointment one additional year. These employees are entitled to the same rights and benefits as term employees and will serve a one year probationary period. The Pay-for-Performance Management System

outlined in this Plan applies to contingent employees. Appointment will be made under the same appointment authorities and process as regular term appointments, but recruitment bulletins must indicate that there is a potential for conversion to permanent employment.

Employees hired under the contingent employee authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date; (2) served two years of substantially continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) have a current rating of "B" or better.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to one of the following term appointments at management discretion, with no change to the existing Not To Exceed date;

1. New contingent employee appointments provided they were hired for their current positions under competitive procedure. These employees will be eligible for conversion to career-conditional appointment if they have a current rating of "B" or better (or the equivalent of "B" in their current evaluation system) and are selected under merit promotion procedures for their permanent position after having completed two years of continuous service. Time served in term positions prior to conversion to the contingent employee appointment is creditable, provided the service was continuous.

2. The Flexible Length and Renewable Term Technical Appointment as published in 82 FR 43339 and the internal operating procedures.

Extended Probationary Period

The current one-year probationary period will be extended to "up to three years" for all newly hired employees in all pay bands. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a research cycle and/or to fully evaluate an employee's contribution and conduct. The length of the probationary period for the E&S Occupational Family will be three years. The probationary period for all other occupational families will be two years.

Aside from extending the time period, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee subject to serving a probationary period that was appointed prior to the implementation date will not be affected. The “up to three years” probation will apply to new hires or those who do not have reemployment rights or reinstatement privileges.

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the DHA R&D decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, it shall terminate his/her services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the manager’s conclusions as to the inadequacies of his/her performance or conduct.

Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one-year supervisory probationary period for the initial appointment to a supervisory position. An employee may simultaneously complete the one-year supervisory probationary period at the same time they complete the initial two- or three-year probationary period. If an employee is promoted into the supervisory position, during this time the decision is made to return the employee to a non-supervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower pay band and basic pay than the position from which he/she was promoted.

Voluntary Emeritus Program

Under the demonstration project, Commanders/Directors will have the authority to offer retired, or separated employees voluntary assignments in their activities. This authority will include individuals who have retired or separated from Federal service. Voluntary Emeritus Program (VEP)

assignments are not considered “employment” by the Federal Government (except for the purposes of injury compensation). Thus, such assignments do not affect an employee’s entitlement to buy-outs or severance payments based on an earlier separation from Federal service. The VEP will ensure continued quality research while reducing the overall salary line by allowing individuals to accept retirement incentive with the opportunity to retain a presence within their community. The program will be of most benefit during manpower reductions as individuals could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced individuals.

To be accepted into the emeritus program, a volunteer must be approved by the subordinate activity Commander/Director. Everyone who applies is not entitled to a voluntary assignment. The laboratory Commander/Director must clearly document the decision-making process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment.

Documentation of rejections will be maintained for two years. To ensure success and encourage participation, the individual’s Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal individuals may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers. An agreement will be established between the volunteer, the subordinate activity Commander/Director, and the servicing CHRSC. The agreement will be reviewed by the DHA legal office for ethics determinations under the Joint Ethics Regulations. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation, and any and all claims against the Government because of the voluntary assignment are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purpose of injury compensation;

(c) volunteer’s work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the subordinate activity (travel, administrative, office space, supplies);

(f) a one-page or less Statement of Duties and Experience;

(g) a provision that states no additional time will be added to a volunteer’s service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the VEP;

(h) a provision allowing either party to void the agreement with 10 working days written notice; and

(i) the level of security access required (any security clearance required by the position will be managed by the subordinate activity while the volunteer is a member of the VEP).

Voluntary Expert Program

Under the demonstration project, Commanders/Directors will have the authority to offer voluntary assignments to U.S. citizens who are retired, separated or on sabbatical from private or public sector organizations. The VEP will provide opportunities for these individuals to bring commercial sector or public sector knowledge and experience into the STRLs. The VEP will not be used to replace any government personnel or interfere with their career opportunities. The VEP may not be used to replace or substitute for work performed by government personnel occupying positions required to perform the STRL’s mission. The VEP assignments are not considered “employment” by the Federal government (except as described in 85 FR 5639). The DHA R&D will implement the VEP in accordance with 85 FR 5639.

E. Expanded Developmental Opportunities Program

The DHA R&D Expanded Developmental Opportunities Program will cover all demonstration project employees. An expanded developmental opportunity complements existing developmental opportunities such as (1) long-term training, (2) one-year work experiences in an industrial setting via the Relations With Industry Program, (3) one-year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within the DHA R&D, (5) developmental assignments in higher headquarters within the DHA and DoW, (6) self-directed study via correspondence courses and local colleges and

universities, (7) details within DHA R&D and to other Federal Agencies, and (8) Intergovernmental Personnel Act Agreements.

Each developmental opportunity period should benefit the DHA R&D, as well as increase the employee's individual effectiveness. Various learning or uncompensated developmental work experiences may be considered, such as advanced academic teaching or research, sabbaticals, or on-the-job work experience with public or non-profit organizations.

An expanded developmental opportunity period will not result in loss of (or reduction in) basic pay, leave to which the employee is otherwise entitled, or credit for time or service. Input for performance rating purposes will be obtained from the gaining organization to ensure a rating of record is on file and, if warranted, a performance award and/or bonus and retention years credit for RIF purposes is documented. The opportunity to participate in the Expanded Developmental Opportunities Program will be announced as opportunities arise. Instructions for application and the selection criteria will be included in the announcement. Final selection/approval for participation in the program will be made by activity Commanders/Directors. The position of employees on an expanded developmental opportunity may be backfilled by temporary promotion, or temporary/contingent employees. However, that position or its equivalent must be made available to the employee returning from the expanded developmental opportunity.

An employee accepting an Expanded Developmental Opportunity must sign a continuing service agreement. If the employee voluntarily leaves the DHA R&D before the service obligation is completed, the employee is liable for repayment. However, the DHA R&D Director has the authority to waive this agreement.

F. Revised Reduction-in-Force (RIF) Procedures

The DHA R&D will follow the RIF rules as published in 87 FR 58334 dated September 26, 2022. The RIF rules as they apply to DHA R&D will be addressed in the internal operating procedures.

When an employee in the DHA R&D demonstration project is faced with separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of reemployment or restoration rights, or furlough for more

than 30 calendar days or more than 22 discontinuous days, RIF procedures will be used. The RIF notice period will follow OPM guidelines. Except where waived or modified in the waiver section of this plan, grade and pay retention will follow current law and regulations (e.g. occupational family pay bands will substitute for grade.)

Use of Voluntary Incentives

The 82 FR 43339, September 15, 2017, authorizes the DHA R&D Director to offer Voluntary Early Retirement (VERA) and VSIP authorities, as appropriate, to: Approve the use of VERA/VSIP incentives; determine which employees should be offered such incentives; and determine the amount of VSIP.

IV. Training

Introduction

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will not only provide the necessary knowledge and skills to carry out the proposed changes but will also lead to commitment to the program on the part of participants.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system. The elements to be covered in the orientation portion of this training will include at a minimum: (1) A description of the personnel system, (2) how employees are converted into and out of the system, (3) the pay adjustment and/or bonus process, (4) familiarization with the new position descriptions and performance objectives, (5) the performance evaluation management system, (6) the reconsideration process, and (7) the demonstration project administrative and formal evaluation process.

Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, training in using the classification system, position description

preparation, and performance evaluation. Additional training may focus on non-project procedural techniques such as interpersonal and communication skills.

Administrative Staff

The administrative staff, including human resources specialists, subordinate activity administrative officers, and human resources points of contact will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

Employees

The DHA R&D Demonstration Project Office will make and coordinate all arrangements necessary to train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

Conversion to the Demonstration Project

Initial entry into the demonstration project will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate pay band and pay preservation as allowed by regulation.

(a) Under the GS pay structure, employees progress through their assigned grade in step increments. The DHA R&D demo replaces the GS grade structure with pay bands. Employees being assigned to the DHA R&D demo from the GS structure, whether voluntary or involuntary, will be awarded that portion of the next higher step based upon the portion of the waiting period they have completed prior to the date of conversion to the DHA R&D demo; this is called a within grade increase (WGI) buy-in and will be added to the employee's base pay (without locality), as long as the WGI buy-in does not cause the total base pay to exceed the top of the pay band for which assigned. Employees at step 10, or receiving retained rates, on the date of implementation will not be eligible for a prorated lump sum buyout of the WGI since they are already at or above the top of the step scale.

(b) Employees who are covered by special salary rates, prior to the demonstration project, will no longer be considered a special rate employee under the demonstration project. These employees will, therefore, be eligible for full locality pay. The adjusted salaries of

these employees will not change. Rather, the employees will receive a new basic pay rate computed by dividing their adjusted basic pay (higher of special rate or locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action and pay retention provisions will not apply to the conversion process as there will typically be no change in total salary. In situations where the special salary rate exceeds the adjusted salary rate (that includes locality pay) may be considered for a staffing supplement.

(c) Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the contingent employee appointments so long as the original term appointment was made under competitive procedures. An automatic conversion from current GS grade and pay into a new broadband system will be accomplished. Each employee's initial total salary under the demonstration project will be set as outlined in paragraph (b) above. If conversion into the demonstration project is accomplished by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

(d) Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band which corresponds to the grade of record. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the DHA R&D. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

(e) Employees who voluntarily accept a lower pay band where the maximum rate is lower than the employee's current salary, pay will be set at the maximum rate of the lower pay band.

Conversion or Movement From a Project Position to a GS Position

If a DHA R&D demonstration project employee is moving to a GS position, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rates of pay to GS-equivalent rates of pay. The converted GS grade and GS rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project. The converted GS grade may be used to determine placement in non-GS positions.

Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a "GS rate range" includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS-11.

(b) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted

rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described "step 4" rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower GS grade than the GS grade currently encompassed within employee's current pay band.

Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to GS rate of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment) is converted to a GS adjusted rate on the highest applicable GS rate range for the converted GS grade. (For this purpose, a "GS rate range" includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes

for which the employee's higher locality rate is not basic pay.)

(d) If the highest applicable GS grade is GS-15, and the employee's adjusted pay falls within the locality pay cap range, *i.e.*, the maximum allowed for the GS-15, the step will be determined by looking at the base pay (without locality). If the employee's base pay falls between two steps, the rate will be set at the higher step.

(e) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (*i.e.*, same step position).

E&S Pay Band V Employees

An employee in Pay Band V of the E&S Occupational Family will convert out of the demonstration project at the GS-15 level. The DHA R&D, in consultation with the CHRSC, will develop a procedure to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their adjusted pay exceeds the GS-15, step 10 rate, there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS-15, step 10. For those Pay Band V employees paid below the adjusted GS-15, step 10 rate, the converted rates will be set in accordance with Pay-Setting Provisions above.

Employees With Band or Pay Retention

If an employee is retaining a band level under the demonstration project, apply the procedures in the Grade-Setting and Pay-Setting Provisions above, using the grades encompassed in the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the two-year limit on grade retention in 5 U.S.C. 5362.

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. The standard provisions of pay retention under 5 U.S.C. 5362 shall apply to DHA R&D employees, except as waived or modified in Section IX of the FRN.

Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade

increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded, and merit principles will be maintained. Supporting personnel specialists in CHRSC will continue to process personnel-related actions and provide consultative and other appropriate services.

Automation

The DHA R&D will continue to use the DCPDS for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices. Local automated systems will be developed to support computation of performance-related pay increases and awards, and other personnel processes and systems associated with this project.

Revision

Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The DHA R&D will make minor modifications, such as changes in the occupational series in an occupational family without further notice.

VII. Project Evaluation

Introduction

The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in both intermediate and ultimate outcomes (*i.e.*, organizational effectiveness, mission accomplishment, and customer satisfaction). In conducting the evaluation DHA R&D will ensure the Under Secretary of War for Research and Engineering (USW(R&E)) evaluation requirements are met in addition to applying knowledge gained from other DoW laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

This STRL adopts innovative practices tested in other STRLs, tailored policies and procedures to meet the specific needs of DHA R&D, and allows continued exploration and adaptation of innovative practices to meet future needs. The STRL flexibilities may be

modified, new interventions adopted, unintended consequences corrected, and guidance clarified as experience is gained, results analyzed, and conclusions are reached on how the system is working in a changing workforce environment.

Evaluation Model

An evaluation model for the DHA R&D Demo will utilize elements critical to an assessment of the effectiveness of the flexibilities. Evaluation will include pre-implementation of DHA R&D data to assess actual effect size of transitioning out of the USAMRDC and comparing across the likely annual and five-year milestones as a baseline. The focus of the evaluation will be on pre-implementation of DHA R&D data to assess actual effect size of transitioning out of the USAMRDC, intermediate outcomes, *i.e.*, the results of specific personnel system changes which are expected to improve human resources management; and, ultimate outcomes, *i.e.*, improved organizational effectiveness, mission accomplishment, and DHA R&D customer satisfaction.

Interim evaluations, as requested by the PMB, DHA R&D Director, DHA, or DoW authority, are conducted to review and assess the effectiveness of STRL features. Qualitative and quantitative data from various sources will be used in the evaluation, to include summary data from performance rating periods and workforce surveys. Annually, reviews and analyses of the performance management system and the performance payout process are conducted for consistency, fairness, and equity and findings and recommendations are presented to the PMB, DHA R&D Director, and/or other authority, as appropriate. The DHA R&D reviews and considers the evaluations provided, may revise operating policies and procedures, and make recommendations to the PMB.

Temporary Authorities Evaluation

Procedures for evaluating temporary authorities are incorporated into the normal STRL evaluation process as appropriate. The DHA R&D Demo Program Manager will provide information on the use of such authorities including, but not limited to, hires, retention rates, compensation, awards, workforce composition, etc. when requested by the DHA, the Defense Civilian Personnel Advisory Service, USW(R&E), or other appropriate requesting authority.

Method of Data Collection

Data from a variety of different sources will be used in the evaluation.

Sources may include employees, leadership, stakeholder, decision-maker, customer, mission partners, etc. Information from existing personnel management information systems supplemented with perceptual survey data from employees, leadership, and mission-related organizations will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the DHA R&D Demo is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as results are substantiated by the review and validation of results through different collection methods (see Appendix B). The following types of qualitative and/or quantitative data may be collected as part of the evaluation:

1. Workforce data.
2. Personnel office data.
3. Employee attitudes and feedback using surveys, structured interviews, and focus groups.
4. Leadership attitudes and feedback using surveys, structured interviews, and focus groups.
5. Local activity histories.
6. Core measures of laboratory effectiveness.

VIII. Required Waivers to Law and Regulation

Title 10 U.S.C. 4121 provides authorities to the STRL to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the demonstration project. The below Title 5, U.S.C., and Title 5, Code of Federal Regulations (CFR) are waived to the extent necessary to allow the provisions described in this FRN. In due course, additional laws and regulations may be identified for waiver request.

1. Waivers to Title 5, U.S.C.

Chapter 31, Section 3111: Acceptance of volunteer service—To the extent that the acceptance of retired or separated civilian and military are included as volunteers under current statute in addition to student volunteers.

Chapter 31, Section 3132: The Senior Executive Service, Definitions and Exclusions.

Chapter 33, Section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, Section 3341: Details; within Executive or military departments—Increasing 120-Day Increments for Details to 180 days.

Chapter 35, Section 3502: Order of Retention—Waived to the extent necessary to allow the provisions of RIF as described in 87 FR 58334.

Chapter 43, Sections 4302 and 4303: To the extent necessary to (1) substitute “pay band” for “grade” and (2) provide that moving to a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an action covered by the provisions of section 4303.

Chapter 51, Sections 5101–5111: Purpose, definitions, basis, classification of positions, review, authority—Applies to the extent that white collar employees will be covered by broad banding. Pay category determination criteria for Federal wage system positions remain unchanged.

Chapter 53, Sections 5301, 5302 (8) and (9), 5303 and 5304: Pay Comparability System—Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow (1) demonstration project employees to be treated as GS employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) employees in Pay Band V of the E&S Occupational Family to be treated as ST employees for the purposes of these provisions.

Chapter 53, Section 5305: Special Salary rates.

Chapter 53, Sections 5331–5336: General Schedule Pay Rates.

Chapter 53, Sections 5361–5366: Grade and pay retention—This waiver applies only to the extent necessary to:

- (1) replace “grade” with “pay band;”
- (2) allow demonstration project employees to be treated as GS employees;

- (3) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of “F;”

- (4) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced;

- (5) provide that an employee receiving a retained rate whose performance rating is “F” at the time of a general pay increase will receive no increase in the retained rate;

- (6) ensure that, for employees in Pay Band V of the E&S Occupational Family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (*i.e.*, there is no entitlement to a retained rate).

Chapter 53, Section 5371: Health Care Positions—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as if they hold positions subject to chapter 51 of title 5.

Chapter 55, Section 5545(d): Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the E&S Occupational Family.

Chapter 57, Sections 5753, 5754, and 5755: Recruitment and relocation bonuses, retention incentives, and supervisory differentials waived to the extent necessary to allow provisions as described in this FRN.

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that Cost of Living Adjustments paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 59, Section 5948(1): Physicians Comparability Allowances—This waiver applies only to the extent necessary to allow (1) physicians under the demonstration project to be treated as employees paid under the GS and (2) physicians in Pay Band V of the E&S Occupational Family who are performing research and technology assignments to be treated as ST positions.

Chapter 75, Adverse Actions, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Waived to the extent necessary to apply probationary and trial period requirements described in STRL FRNs.

Chapter 75, Section 7512(3): Adverse actions—This provision is waived only to the extent necessary to (1) replace “grade” with “pay band” and (2) provide that a reduction in band level is not an adverse action if it results from the employee’s rate of basic pay being exceeded by the minimum rate of basic pay for his or her pay band.

Chapter 75, Section 7512(4): Adverse actions—This provision is waived only to the extent that adverse action provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced.

Title 5, CFR

Part 300.601–605: Time-In-Grade Restrictions—Restrictions eliminated under the demonstration.

Part 308.101–103: Volunteer Service—To the extent that retired/separated civilians and military can perform voluntary services in addition to student volunteers.

Part 11 Probationary and Trial Periods, part 11: Waived to the extent necessary to apply probationary and trial period requirements described in this FRN.

Part 316.301: Term Employment—Adding years to exceed four and establishment of Contingent appointments and allow provisions of the flexible length and renewable term-technical appointments.

Part 316.303: Tenure of term employees—Demonstration allows for conversion to career/career-conditional appointments.

Part 316.303(a): Waived to the extent necessary to allow flexible length and renewable term technical appointments to count toward competitive status.

Part 316.304(a): Waived to allow a two-year probationary period under the flexible length and renewable term-technical appointments.

Part 316.305: Eligibility for within-grade increases—Demonstration employees no longer receive WGs.

Part 334, Section 334.102: Temporary Assignment of Employees Outside the Agency. Waived to the extent necessary to allow the provisions described in this FRN.

Part 335.103: Covering the length of details and temporary promotions.

Part 351, Subparts B, D, E, F, and G: Waived to the extent necessary to allow the provisions of RIF as described in 87 FR 58334.

Part 430: Subpart B, Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees—Employees under the demonstration project will not be subject to the requirements of this subpart.

Part 430.208: Rating performance is waived to the extent necessary to allow STRLs to assign an assumed rating as described in 87 FRN 58334.

Part 432: Performance-Based Reduction In Grade and Removal Actions—Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, and reduced in pay without a reduction in band level based on unacceptable performance. For employees who are reduced in band level without a

reduction in pay as a result of non-receipt of a general increase, Sections 432.105 and 432.106 (a) and (c) do not apply.

Part 432, Sections 104 and 105: Addressing unacceptable performance and proposing and taking action based on unacceptable performance—In so far as references to “critical elements” are deleted (all elements are critical), and adding that the employee may be “reduced in band level, or pay, or removed” if performance does not improve to acceptable levels after a reasonable opportunity.

Part 511: Classification Under the General Schedule—To the extent that grades are changed to broadbands, and that white collar positions are covered by broad banding.

Part 530, subpart C: Special Salary Rate Schedules for Recruitment and Retention. Waived to the extent necessary to allow the provisions described in this FRN.

Part 531, subparts B, D, and E: Pay Under the GS—Determining rate of basic pay, within-grade increases, and quality step increases. Waived to the extent necessary to allow the provisions described in this FRN.

Part 531, subpart F: Locality Based Comparability Payments—This waiver applies only to the extent necessary to allow:

- (1) Demonstration project employees to be treated as GS employees,
- (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay, and
- (3) employees in Pay Band V of the E&S Occupational Family to be treated as ST employees for the purposes of these provisions.

Part 536: Grade and pay retention—This waiver applies only to the extent necessary to:

- (1) Replace “grade” with “pay band;”
- (2) allow demonstration project employees to be treated as GS employees;
- (3) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of “F;”
- (4) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced;

(5) provide that an employee receiving a retained rate whose performance rating is “F” at the time of a general pay increase will receive no increase in the retained rate;

(6) ensure that, for employees in Pay Band V of the E&S Occupational Family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (*i.e.*, there is no entitlement to a retained rate).

Part 550.703: Severance Pay—This waiver applies only to the extent necessary to modify the definition of “reasonable offer” by replacing “two grade or pay levels” with “one band level” and “grade or pay level” with “band level.”

Part 550.902: Hazardous Duty Differential—This waiver applies only to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the E&S Occupational Family.

Part 575, Subparts A–D: Recruitment incentives, relocation incentives, retention incentives, and supervisory differentials. Waived to the extent necessary to allow provisions as described in this FRN.

Part 591, subpart B: Cost-of-Living Allowances and Post Differential-Non-foreign Areas—This waiver applies to the extent necessary to allow (1) Demonstration project employees to be treated as employees under the GS and (2) employees in Pay Band V of the E&S Occupational Family to be treated as ST employees for the purposes of these provisions.

Part 752.401(a)(3): Adverse Actions—This waiver applies only to the extent necessary to (1) replace “grade” with “pay band” and (2) provide that a reduction in pay band level is not an adverse action if it results from the employee’s rate of basic pay being exceeded by the minimum rate of basic pay for his or her pay band.

Part 752.401(a)(4): Adverse Actions—This waiver applies only to the extent that adverse action provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced.

Appendix A: Occupational Series by Occupational Family

I. Engineers and Scientists	
0101	Social Science
0180	Psychology
0190	Anthropology
0401	Biology
0403	Microbiology
0405	Pharmacology
0408	Ecology
0410	Zoology
0413	Physiology
0414	Entomology
0415	Toxicology
0440	Genetics
0601	General Health Science
0602	Medical Officer
0603	Physician Assistant
0610	Nurse
0630	Dietitian & Nutritionist
0631	Occupational Therapist
0633	Physical Therapist
0644	Medical Technologist
0660	Pharmacist
0662	Optometrist

0701	Veterinary Medical Science
0801	General Engineering
0808	Architecture
0830	Mechanical Engineering
0854	Computer Engineer
0855	Electronics Engineering
0858	Biomedical Engineering
1301	General Physical Science
1306	Health Physics
1310	Physics
1320	Chemistry
1520	Mathematics
1529	Mathematical Stat
1530	Statistician
1550	Research Computer Scientist
1560	Data Science Series

II. E&S Technicians

0181	Psychology Aid/Technician
0404	Biological Science Technician
0499	Biological Science Student Trainee
0620	Practical Nurse

0636	Rehabilitation Therapy Assistant
0640	Health Aid & Technician
0645	Medical Technician
0646	Pathology Technician
0647	Diagnostic Radiologic Technologist
0649	Medical Instrument Technician
0651	Respiratory Therapist
0704	Animal Health Technician
0802	Engineer Technician
0809	Construction Control
0818	Engineering Drafting
0856	Electronics Technician
1016	Museum Specialist
1311	Physical Sciences Technician
1521	Mathematics Technician

III. Administrative	
0018	Safety & Occupational Health Management
0028	Environmental Protection Spec
0080	Security Administration
0089	Emergency Management Specialist
0201	Human Resources Management

0301	Misc Administration and Program
0308	Records and Information Management Specialist
0340	Program Management
0341	Administrative Officer
0342	Support Services Administration
0343	Management/Program Analyst
0346	Logistics Management
0391	Telecommunications
0501	Financial Administration & Program
0505	Financial Management
0510	Accounting
0511	Auditing
0560	Budget Analysis
0671	Health System Administration Series
0901	Legal Administrative Specialist
0905	General Attorney
0950	Paralegal Specialist
1001	Technical Writing and Public Affairs Specialist/General Arts & Information
1020	Illustrating
1035	Public Affairs
1040	Language Specialist
1060	Photography
1071	Audiovisual Production

1082	Writing & Editing
1083	Technical Writing & Editing
1084	Visual Information
1101	General Business and Industry
1102	Contracting
1105	Purchasing
1109	Grants Management Specialist
1152	Production Control
1222	Patent Attorney
1410	Librarian
1412	Technical Information Services
1601	General Facilities & equipment
1640	Facility Management
1670	Equipment Specialist
1701	General Education and Training
1710	Educational & Vocational Training
1712	Training Specialist
1740	Education Services
1801	General Inspection, Investigation and Compliance
1910	Quality Assurance
2001	General Supply
2003	Supply Program Management
2010	Inventory Management

2050	Supply Cataloging
2101	Transportation Specialist
2181	Aircraft Operation
2210	Information Technology Specialist

IV. General Support

0029	Environmental Protection Assistant
0085	Security Guard
0086	Security Clerical & Asst
0302	Messenger
0303	Misc Clerk and Asst
0304	Information Receptionist
0305	Mail and File
0312	Clerk-Stenographer/Reporter
0318	Secretary
0322	Clerk-Typist
0326	Office Automation Clerical/Asst
0344	Management Clerical/Asst
0525	Accounting Technician
0561	Budget Clerical/Asst
0675	Medical Records Technician
0679	Medical Clerk

1016	Museum Specialist & Technician
1087	Editorial Asst
1106	Procurement Clerical/Tech
1411	Library Technician
1499	Library and Archives Student Trainee
1531	Statistical Asst
2005	Supply Clerical/Tech
2102	Transportation Clerk/Asst

**Appendix B: Project Evaluation and
Oversight-Intervention Impact Model–
DoW Lab Demonstration Program**

BILLING CODE 6001–FR–P

Intervention	Expected effects	Measures	Data source
1. Compensation			
a. Broad banding	— Increased organizational flexibility — Reduced administrative workload, and paperwork reduction — Advanced in-hire rates — Slower pay progression at entry levels	— Perceived flexibility. — Actual/perceived time savings. — Starting salaries of banded v. non-banded employees — Progression of new hires over time by band, career path — Mean salaries by band, career path, demographics — Total payroll cost	— Attitude survey — Personnel office data, PME results, attitude survey — Workforce data — Workforce data — Workforce data — Personnel office data

b. Conversion buy-in	— Increased pay potential — Increased satisfaction with advancement — Increased pay satisfaction — Improved recruitment — No change in high grade (GS-14/15) distribution. — Employee acceptance	— Employee perceptions of advancement — Pay satisfaction, internal/external equity — Offer/acceptance ratios. — Percent declinations. — Number/percentage of high-grade salaries pre/post banding — Employee perceptions of equity and fairness — Cost as a percent of payroll	— Attitude survey — Attitude survey — Personnel office data — Workforce data — Workforce data
2. Performance Management			

a. Cash awards/bonuses	— Reward/motivate performance — To support fair and appropriate distribution of awards	— Perceived motivational power — Amount and number of awards by career path, demographics — Perceived fairness of awards — Satisfaction with monetary awards	— Attitude survey — Workforce data — Attitude survey — Attitude survey
b. Performance/contribution-based pay progression	— Increased pay-performance link — Improved performance feedback — Decreased turnover of high performers	— Perceived pay performance link — Perceived fairness of ratings — Satisfaction with ratings — Employee trust in supervisors — Adequacy of performance feedback	— Attitude survey — Attitude survey — Attitude survey — Attitude survey — Workforce data — Workforce data

c. New appraisal process	— Differential pay progression of high/low performers — Alignment or organizational and individual performance expectations and results — Increased employee involvement in performance planning and assessment — Reduced administrative burden	— Turnover by performance rating category. — Pay progression by performance rating category, career path — Linkage of performance expectations to strategic plans/goals — Performance expectations — Perceived Involvement — Performance management procedures	— Performance expectations, strategic plans — Attitude survey/focus groups — Attitude survey/focus groups — Personnel regulations — Attitude survey
d. Performance development	— Improved communication	— Employee and supervisor perception of revised procedures — Perceived fairness of process	— Focus group — Focus group

	— Better communication of performance expectations — Improved satisfaction and quality of workforce	— Feedback and coaching procedures used — Time, funds spent on training by demographics — Organizational commitment — Perceived workforce quality attitude survey	— Personnel office data — Training records — Attitude survey
3. Classification			
a. Improved	— Reduction in amount	— Time spent on	— Personnel office

classification systems with generic standards	of time and paperwork spent on classification	classification procedures — Reduction of paperwork/number of personnel actions (classification/promotion)	data — Personnel office data
	— Ease of use	— Managers' perceptions of time savings, ease of use, improved ability to recruit	— Attitude survey
	— Improved recruitment of employees with appropriate skills	— Quality of recruits — Perceived quality of recruits — Grade point averages of new hires, educational levels	— Attitude survey — Focus groups/interviews — Personnel office data
b. Classification authority delegated to managers	— Increased supervisory authority/accountability	— Perceived authority.	— Attitude survey
	— Decreased conflict between management	— Numbers of classification	— Personnel records

c. Dual career ladder	and personnel staff — No negative impact on internal pay equity — Increased flexibility to assign employees — Improved internal mobility — Increased pay equality — Flatter organization — Improved quality of supervisory staff	disputes/appeals pre/post. — Management satisfaction. with service provided by personnel office — Attitude survey — Internal pay equality — Assignment flexibility — Supervisory non/supervisory ratios — Perceived internal mobility — Perceived pay equality — Supervisory/non-supervisory ratios — Employee perceptions of quality of supervisor	— Attitude survey — Focus groups, survey — Workforce data — Attitude survey — Attitude survey — Workforce data — Attitude survey
4. RIF			
Modified RIF	— Prevent loss of high	— Separated employees	— Workforce data

	performing employees with need skills — Contain cost and disruption	by demographics, performance — Satisfaction with RIF process — Cost comparisons of traditional versus modified RIF — Time to conduct RIF — Number of appeals/reinstatements	— Attitude/focus groups — Attitude/focus groups — Personnel office/budget data — Personnel office data — Personnel office data
5. Combination of all Interventions			
All	— Improved organizational effectiveness — Improved management of DHA R&D workforce	— Combination of personnel measures — Employee/management job satisfaction (intrinsic/extrinsic) — Planning procedures	— All data sources — Attitude survey — Strategic planning documents

	— Improved planning — Improved cross functional coordination — Increased product success — Cost of innovation	— Perceived effectiveness of planning procedures — Actual/perceived coordination — Customer satisfaction — Project training/development cost (staff salaries, contract cost, training hours per employee)	— Organizational charts — Attitude survey — Customer satisfaction surveys — Demo project records — Contract documents
6. Context			
a. Regionalization	— Reduced servicing ratios/cost — No negative impact	— HR servicing ratios — Average cost per employee served — Service quality,	— Personnel office data, workforce data — Workforce data/personnel office data

b. GPRA	on service quality — Improved organizational performance	timeliness — Other measures to be developed	— Attitude survey/focus groups — As established
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Critical elements are generic attributes of job performance, such as technical competence, that an employee exhibits in performing job responsibilities and associated performance objectives. Each critical element is assigned a weight, in multiples of five, within a prescribed range. The total weight of all critical elements in a performance plan is 100 points. The supervisor, following a discussion with the employee assigns each element some portion of the 100 points in accordance with its importance for mission attainment. Generally, essentially identical positions will have the same critical elements and the same weights. These weights will be developed along with employee performance objectives.

All the elements listed below are critical. All employees will be rated against critical elements 1-5. Only those employees whose duties require manager/leadership responsibilities will also be rated on critical element 6. Supervisors will be rated against all 7 critical elements including Supervision/Equal Employment Opportunity (EEO) as listed below.

1. Technical Competence—Exhibits and maintains current technical knowledge, skills, and abilities to produce timely, quality work with the appropriate level of supervision. Makes technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate career paths, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight range: 15 to 50)

2. Working Relationships—Accepts personal responsibility for assigned tasks. Considerate of others' views and open to compromise on areas of difference, if allowed by technology, scope, budget, and direction. Exercises tact and diplomacy

and maintains effective relationships, particularly in immediate work environment and team situations. Always willing to give assistance. Shows appropriate respect and courtesy. (Weight range: 5 to 15)

3. Communications—Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and cogent. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight range: 5 to 15)

4. Resource Management—Meets schedules and deadlines, accomplishes work in order of priority; generates and accepts ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organizational resource development and conservation goals. (Weight range: 15 to 50)

5. Customer Relations—Demonstrates care for customers through respectful, courteous, reliable, and conscientious actions. Seeks and develops solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed and prevents surprises. Within the scope of job responsibility, seeks out and develops new programs and reimbursable customer work. (Weight range: 10 to 50)

6. Management/Leadership—Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Develops and implements tactical plans. Exercises leadership skills within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises due

responsibility to oversee technical acquisition/organizational positions assigned to them. (Weight range: 0 to 50)

7. Supervision/EEO—Works toward recruiting, developing motivating, and retaining quality team members; takes timely/appropriate actions, applies EEO/merit principles; communication mission and organizational goals; by example, creates a positive safe, and challenging work environment; distributes work and empowers team members. (Weight range: 15 to 50)

Appendix D Benchmark Performance Standards

These Benchmark Performance Standards Are Used to Evaluate and Score Performance against the Weighted Performance Elements. This Sheet Must Be Used in Conjunction with Benchmark Job Description and Performance Objectives.

GENERIC LEVELS OF ACHIEVEMENT AND CORRESPONDING PERFORMANCE STANDARDS	ASSIGNED ELEMENT WEIGHT AND SCORE									
	50	45	40	35	30	25	20	15	10	5
100% Performance elements were attained demonstrating exceptional initiative, versatility, originality, and creativity. This individual demonstrates the ability to grasp, understand, organize, and convey complex issues to others and carry the job assignment to successful completion with minimum direct supervision. Performance elements were effectively achieved utilizing cooperation, responsiveness, conflict avoidance, or conflict resolution. Written and oral communications were appropriately demonstrated effectively and efficiently. Performance elements were achieved with demonstrated leadership, integrity, competency, commitment, candor, and sense of duty.	49	44	39	34	29	24	19			
	48									
	47	43	38							
	46	42	37	33	28	23	18	14		
	45	41	36	32	27	22	18		9	
	44	40	35	31	27	22				
	43	39	34	30	26		13			
	42	38	33	29	25	21	17			
	41	37	32	28	24	20	16	12	8	4
	40	36	31	27	23	19	15	11		
	39	35	30	26	22	18				
	38	34	29	25	21	17				
	37	33	28	24	20	16	12	8	4	
	36	32	27	23	19	15	11			
70% Performance elements were attained effectively and efficiently with consistently high quality and quantity of work. This individual has demonstrated the ability to complete the job assignments in an efficient, orderly sequence that culminated in results that were timely, correct, thorough, and cost-effective. Performance elements were attained with consistently above average quality and reliability while effectively utilizing accepted procedures and resolving problems with skill and resourcefulness. Performance elements were attained with consistently productive cooperative efforts and with clear, precise, and convincing written and oral communication.	35		28	24	21	17	14		7	
	34	31	27	23	20	17				
	33	30	26	22	19	16	13	10		
	32	29	25	21	18	15	12	9	6	3
	31	28	24	20	17	14				
	30	27	23	19	16	13	10	7	4	1
	29	26	22	18	15	12	9	6	3	
	28									
	27	25	22	19	16	13	10	7	4	1
	26	24	21	18	15	12	9	6	3	
50% Performance elements were accomplished, were mostly reliable, and delivered without unacceptable delays. Procedures were minimally correct and problems were dealt with satisfactorily. Attained performance elements, using work methodology that demonstrated a reasonable degree of cooperation with others with clear and concise written and oral communications.	25		20		15		10		5	
UNSATISFACTORY. Performance elements were not successfully completed because of failure in quality, quantity, completeness, responsiveness, or timeliness of work. Performance elements products were deficient because they were contrary to direction or guidelines; did not meet minimum specifications; were inconsistent with organizational procedures; were significantly flawed or substandard in quality; demonstrated insufficient technical knowledge or skill; were incomplete; were unacceptably late; lacked essential cooperative involvement or support; or problems that arose during performance of performance elements activities were not satisfactorily resolved.	24	22	19	17	14	12	9	7	4	2

NUMERICAL RATING SCORE

Dated: September 15, 2026.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2026-19092 Filed 9-16-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: BP-27]

Revision of Fiscal Year (FY) 2026–2028 Power Rate Schedules and General Rate Schedule Provisions (GRSPs) for the Remainder of BP-26 Rate Period; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (Bonneville or BPA), Department of Energy (DOE).

ACTION: Revision to add power rate adjustment mechanisms to FY 2026–2028 Power Rate Schedules and General Rate Schedule Provisions (GRSPs).

SUMMARY: Because of a recent district court decision in a lawsuit filed by the National Wildlife Federation, a coalition of fishing and environmental groups, and the State of Oregon, Bonneville is holding an expedited rate proceeding pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to add power rate adjustment mechanisms to the FY 2026–2028 Power Rate Schedules and GRSPs for the remainder of the BP-26 rate period. The Northwest Power Act requires that Bonneville's rates be established through a section 7(i) rate proceeding and based on the record of a formal hearing. The expedited proceeding is required to ensure the proposed mechanism takes effect as soon as practicable, given Bonneville is already being negatively impacted by the court order. By this notice, Bonneville announces the commencement of an expedited rate proceeding, designated as the "BP-27" proceeding, for the limited purpose of adding power rate adjustment mechanisms to the FY 2026–2028 Power Rate Schedules and GRSPs. The proposed power rate adjustment mechanisms are expected to recover an additional \$250 million from power rates, which would result in a 6.3 percentage increase to the average effective Priority Firm Non-Slice power rate.

DATES:

Prehearing Conference: A prehearing conference for the BP-27 proceeding will be held at 9 a.m. on October 5,

2026, via WebEx. The WebEx information will be available on Bonneville's website at <https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/bp-27-rate-case> or from the Hearing Clerk.

Intervention: Petitions to intervene in the BP-27 proceeding must be filed on Bonneville's secure website no later than 4:30 p.m. Pacific Prevailing Time on October 6, 2026. Part III of this notice, "Public Participation in BP-27," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants must be received by October 19, 2026, to be considered in the Administrator's Record of Decision (ROD). Part III of this notice, "Public Participation in BP-27," provides details on submitting participant comments.

FOR FURTHER INFORMATION CONTACT: Ms. Elissa Haley, NKS-7, BPA Communications, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293; by phone toll-free at 1-800-622-4519; or by email to enhaley@bpa.gov.

The Hearing Clerk for this proceeding can be reached via the contact information provided on Bonneville's website at <https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/bp-27-rate-case>.

Please direct questions regarding Bonneville's secure website to the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230-5107.

Responsible Officials: Ms. Sarah E. Burczak, Power Rates Manager, is the official responsible for the development of Bonneville's power rates.

SUPPLEMENTARY INFORMATION:

Table of Contents

Part I. Introduction and Procedural Matters
Part II. Scope of the BP-27 Rate Proceeding
Part III. Public Participation in the BP-27 Rate Proceeding
Part IV. Summary of Rate Proposal

Part I—Introduction and Procedural Matters

A. Introduction and Expedited Process

Bonneville is proposing to add power rate adjustment mechanisms to the FY 2026–2028 Wholesale Power Rate Schedules and General Rate Schedule Provisions (GRSPs) for the remainder of the BP-26 rate period in order to address the financial impact of the U.S. District Court for the District of Oregon's Amended Preliminary Injunction Order, ECF No. 2674, *NWF, et al. v. NMFS, et*

al., Case No. 3:01-cv-640-SI, issued March 2, 2026. This proceeding, the BP-27 proceeding, is limited solely to this purpose. The proposed power rate adjustment mechanisms are expected to recover an additional \$250 million from power rates, which would result in a 6.3 percent increase to the average effective Priority Firm Non-Slice power rate, a 5.3 percent increase to the average effective Industrial Firm power rate, and a 2.2 percent increase to the average effective New Resources Firm power rate.

In light of the limited purpose of the BP-27 proceeding, and in compliance with the procedures for the establishment of Bonneville rates set forth in Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), Bonneville is conducting the hearing process for a review of this proposal on an expedited basis.

The Rules of Procedure that govern Bonneville's rate proceedings were published in the **Federal Register**, 83 FR 39993 (Aug. 13, 2018), and posted on Bonneville's website at <https://www.bpa.gov/Finance/RateCases/RulesProcedure/Pages/default.aspx>. Sections 1010.4(b)(4) and 1010.22 of the Rules of Procedure provide for expedited rate processes. In order to facilitate the expedited process in the BP-27 proceeding, pursuant to Section 1010.1(e) of the Rules of Procedure, the Administrator authorizes the Hearing Officer to waive any procedural requirements of the rules for the purpose of developing the record and completing the proceeding on an expedited basis.

B. Proposed Procedural Schedule

Bonneville has made prospective parties aware of its intent to use an expedited process pursuant to section 1010.22 of the Rules of Procedure. The official schedule will be established by the Hearing Officer and may be amended by the Hearing Officer as needed during the proceeding. The Hearing Officer may circumscribe or reduce the timing or availability of any procedural activities in the case as he or she determines are unnecessary or overly burdensome in consideration of the limited scope and purpose of this case.

Initial Proposal Released—October 5, 2026

Prehearing Conference—October 5, 2026
Deadline for Petitions to Intervene—October 6, 2026

Close of Participant Comment Period—October 19, 2026

Final Record of Decision—December 18, 2026

C. *Ex Parte* Communications

Section 1010.5 of the Rules of Procedure prohibits *ex parte* communications. *Ex parte* communications include any oral or written communication (1) relevant to the merits of any issue in the proceeding; (2) that is not on the record; and (3) with respect to which reasonable prior notice has not been given. The *ex parte* rule applies to communications with all Bonneville and DOE employees and contractors, the Hearing Officer, and the Hearing Clerk during the proceeding. Except as provided, any communications with persons covered by the rule regarding the merits of any issue in the proceeding by other executive branch agencies, Congress, existing or potential Bonneville customers, nonprofit or public interest groups, or any other non-DOE parties are prohibited. The rule explicitly excludes and does not prohibit communications (1) relating to matters of procedure; (2) otherwise authorized by law or the Rules of Procedure; (3) from or to the Federal Energy Regulatory Commission (Commission); (4) that all litigants agree may be made on an *ex parte* basis; (5) in the ordinary course of business, about information required to be exchanged under contracts, or in information responding to a Freedom of Information Act request; (6) between the Hearing Officer and Hearing Clerk; (7) in meetings for which prior notice has been given; or (8) as otherwise specified in section 1010.5(b) of the Rules of Procedure. The prohibition on *ex parte* communications applies from the date of publication of this notice and will remain in effect until the Administrator's Final Record of Decision is issued.

Part II—Scope of the BP-27 Rate Proceeding

A. BP-27 Rate Proceeding

The scope of the BP-27 rate proceeding is limited solely to consideration of the proposed revision to add the Court-Ordered Operation Rate Adder (COORA) and COORA True-Up adjustment mechanisms to section II.AD to the Wholesale Power Rate Schedules and GRSPs. The BP-26 power and transmission rates were approved by the Federal Energy Regulatory Commission on a final basis on February 19, 2026. Bonneville is not otherwise revising the BP-26 power or transmission rates in the BP-27 rate proceeding.

Bonneville may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding

that are substantially related to the rates under consideration in the proceeding. See Rules of Procedure, section 1010.4(b)(8)(ii), (iii), (iv). Only Bonneville may prescribe or revise the scope of the proceeding. *Id.* If Bonneville revises the scope of the proceeding to include new issues, Bonneville will provide public notice on its website, present testimony or other information regarding such issues, and provide a reasonable opportunity to intervene and respond to Bonneville's testimony or other information. *Id.*

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of any other matter, issue, topic, or policy that is not directly related to the proposed revisions to section II.AD of the Power Rate Schedules and GRSPs discussed in section IV of this notice.

B. The National Environmental Policy Act

Bonneville is in the process of assessing the potential environmental effects of its proposed power rate adjustments, consistent with the National Environmental Policy Act (NEPA). The NEPA process is conducted separately from the rate proceeding. All evidence and argument addressing potential environmental impacts of the rate adjustments being developed in the BP-27 rate proceeding are excluded from the rate proceeding record. Instead, comments on environmental effects should be directed to the NEPA process.

Based on its most current assessment of the proposed power rate adjustments, Bonneville believes this proposal may be the type of action typically excluded from further NEPA review pursuant to U.S. Department of Energy NEPA regulations and procedures, which apply to Bonneville. More specifically, the proposal appears to solely involve changes to Bonneville's rates and other cost recovery and management mechanisms to ensure that there are sufficient revenues to meet Bonneville's financial obligations and other costs and expenses, while using existing generation sources operating within normal operating limits. As such, it appears this rate proposal falls within Categorical Exclusion B4.3, found at 10 CFR part 1021, Appendix B, which provides for the categorical exclusion from further NEPA review of "[r]ate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a

change in revenue requirements if the operations of generation projects would remain within normal operating limits."

Nonetheless, Bonneville is still assessing the proposal, and, depending upon the ongoing environmental review, Bonneville may instead take another appropriate approach to NEPA. Comments regarding the potential environmental effects of the proposal may be submitted to Katey Grange, NEPA Compliance Officer, EC-4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, and to kcgrange@bpa.gov. Any such comments received by the comment deadline for Participant Comments identified in section III. A of this notice will be considered by Bonneville's NEPA compliance staff in the NEPA process that is being conducted for this proposal.

Part III—Public Participation in the BP-27 Rate

A. Interventions

Any entity or person intending to become a party in the BP-27 proceeding must file a petition to intervene through Bonneville's secure website, <https://www.bpa.gov/secure/Ratecase/>. A first-time user of Bonneville's secure website must create a user account to submit an intervention. Returning users may request access to the BP-27 rate proceeding through their existing accounts and may submit interventions once their permissions have been updated. The secure website contains a link to the user guide, which provides step-by-step instructions for creating user accounts, submitting filings, and uploading interventions. Please contact the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230-5107, with any questions regarding the registration and submission process.

All petitions to intervene must be uploaded to Bonneville's secure website by 4:30 p.m. Pacific Prevailing Time on the deadline in the procedural schedule adopted by the Hearing Officer. Late interventions are strongly disfavored. Petitions to intervene must conform to the format and content requirements in sections 1010.6 and 1010.11 of the Rules of Procedure. Petitions must state the name and address of the entity or person requesting party status and the entity or person's interest in the hearing.

The Hearing Officer will rule on all petitions to intervene. Bonneville customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with the Rules of Procedure. Other petitioners must explain their interests

in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing.

Bonneville or any party may oppose a petition to intervene. The deadline for opposing a timely petition to intervene is two business days after the deadline for filing the petition.

Opposition to an untimely petition to intervene must be filed within two business days after service of the petition.

B. Participant Comments

Bonneville distinguishes between “participants in” and “parties to” the BP-27 proceeding. Separate from the formal hearing process, Bonneville will accept written comments, views, opinions, and information from participants who have not intervened in the BP-27 proceeding and been granted “party” status by the Hearing Officer. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties’ witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Bonneville customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the proceeding may submit participant comments as private individuals (that is, not speaking for their organizations) but may not use the comment procedures to address specific issues raised by their intervenor organizations.

Written comments by participants must be received by October 19, 2026, to be included in the record and considered by the Administrator. Participants should submit comments through Bonneville’s website at www.bpa.gov/comment or by hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. All comments should contain the designation “BP-27” in the subject line.

C. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by Bonneville and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will review and certify the record to the Administrator.

The Administrator will make a final determination on the issue in this proceeding based on the record and

such other materials and information as may have been submitted to or developed by the Administrator. The Final ROD will be made available to all parties. Bonneville will submit the Final ROD and the hearing record to the Commission for confirmation and approval after issuance of the Final ROD.

Part IV—Summary of Rate Proposal

Bonneville is proposing limited revisions to the Fiscal Year 2026–2028 Power Rate Schedules and GRSPs to add new power rate adjustment mechanisms to address the expected financial impact of the U.S. District Court for the District of Oregon’s Amended Preliminary Injunction Order, ECF No. 2674, *NWF, et al. v. NMFS, et al.*, Case No. 3:01–cv–640–SI, issued March 2, 2026.

The Power GRSPs include general rate schedule terms and conditions applicable to Bonneville’s power rates. In addition, the Power GRSPs contain special rate adjustments, charges, credits, and pass-through mechanisms for specific events and customer circumstances.

Specifically, Bonneville proposes adding the COORA and COORA True-Up to GRSP section II.AD. These mechanisms would apply to the following products under the PF-26 Rate Schedule: Load Following, Block, and the Block portion of Slice/Block. The COORA and COORA True-Up also apply to power purchased at the PF Melded Rate (PF-26), Industrial Firm Power Rate (IP-26), and New Resource Firm Power Rate (NR-26). These mechanisms would adjust the PF Tier 1 Equivalent Energy Rates (GRSP II.AA), the Load Shaping Charge True-Up Rate (GRSP II.E, Section 1), and the PF Melded Equivalent Energy Scalar Rate (GRSP II.R, Section 1(c)).

Bonneville’s proposed GRSP revisions are a part of this notice and are available for viewing and downloading on Bonneville’s website at <https://www.bpa.gov/bp-27-rate-case>.

Signing Authority

This document of the Department of Energy was signed on September 10, 2026, by Travis R. Kavulla, Administrator and Chief Executive Officer of the Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in

electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 15, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–19050 Filed 9–16–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–573–000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 1, 2026, Enable Gas Transmission, LLC (EGT), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, 157.210, and 157.211 of the Commission’s regulations under the Natural Gas Act (NGA), and EGT’s blanket certificate issued in Docket No. CP82–384–000,¹ for authorization to (i) construct an approximate 13 mile, 16-inch diameter interstate natural gas pipeline lateral with a capacity of 218 MMcf/d (ii) construct a new delivery meter station; and (iii) install aboveground and appurtenant facilities all located in Pope and Johnson Counties, Arkansas (Clarksville Lateral Project). The project will allow EGT to provide 150 MMcf/d of incremental firm transportation service on EGT’s system to Hatchbo, LLC’s proposed power generation facility in Johnson County, Arkansas. The estimated cost for the Project is \$58.95 million,² all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://www.ferc.gov>). From the Commission’s

¹ As amended in Docket No. CP82–384–001.

² The Commission issued a temporary waiver of the prior notice cost limitation on June 18, 2025 in Docket No. CP25–208–000, and extended it through May 31, 2028, in Docket No. CP25–208–002.

Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to Irma Jarrett, Senior Manager of Certificates, 1300 Main Street, Houston, Texas 77002, or call (713) 989-2605, or by eMail to irma.jarrett@energytransfer.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 13, 2026. How to file protests, motions to intervene, and comments is explained below.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation (OPP) at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,³ any person⁴ or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for

authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,⁵ and must be submitted by the protest deadline, which is 5:00 p.m. Eastern Time on November 13, 2026. Filings that do not meet requirements of 18 CFR 157.205(e)(2)⁶ will not be considered protests by the Commission.⁷ A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁸ and the regulations under the NGA⁹ by the intervention deadline for the project, which is 5:00 p.m. Eastern Time on November 13, 2026. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and

will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on November 13, 2026. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP26-573-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or¹⁰

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP26-573-000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Irma Jarret, Senior Manager of Certificates, Enable Gas Transmission, LLC, 1300 Main Street,

³ 18 CFR 157.205(e).

⁶ 18 CFR 157.205(e)(2).

⁷ *Cheniere Creole Trail Pipeline, L.P.*, 195 FERC

¶ 61,208, at P 8 n.16 (2026).

⁸ 18 CFR 385.214.

⁹ 18 CFR 157.10.

¹⁰ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

³ 18 CFR 157.205.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

Houston, Texas 77002, or by eMail to irma.jarrett@energytransfer.com.

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from OPP at (202) 502-6595 or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

(Authority: 8 CFR 2.1)

Dated: September 14, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-19067 Filed 9-16-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26-575-000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 4, 2026, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221-5887, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and National Fuel's blanket certificate issued in Docket No. CP83-4-000, for authorization to plug and abandon the injection/withdrawal Well 4930 (Well 4930) and the associated 196 feet of 4-inch-diameter well line NW4930 in the Henderson Storage Field. All of the

above facilities are located in in Worth Township, Mercer County, Pennsylvania (Henderson Storage Well 4930 Plug and Abandonment Project). National Fuel determined there is localized corrosion in Well 4930 and continued operation or reworking of the well is not practical, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to Meghan M. Emes, Senior Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857-7004, or by email at emesm@natfuel.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 13, 2026. How to file protests, motions to intervene, and comments is explained below.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation (OPP) at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is 5:00 p.m. Eastern Time on November 13, 2026. Filings that do not meet requirements of 18 CFR 157.205(e)(2)⁴ will not be considered protests by the Commission.⁵ A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁶ and the regulations under the NGA⁷ by the intervention deadline for the project, which is 5:00 p.m. Eastern Time on November 13, 2026. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

⁴ 18 CFR 157.205(e)(2).

⁵ *Cheniery Creole Trail Pipeline, L.P.*, 195 FERC ¶ 61,208, at P 8 n.16 (2026).

⁶ 18 CFR 385.214.

⁷ 18 CFR 157.10.

about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on November 13, 2026. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP26-575-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or ⁸

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP26-575-000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Meghan M. Emes, Senior Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, or by email (with a link to the document) at emesm@natfuel.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from OPP at (202) 502-6595 or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

(Authority: 18 CFR 2.1)

Dated: September 14, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-19066 Filed 9-16-26; 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 Electric Corporate filings:

Docket Numbers: EC26-167-000.

Applicants: Indeck Corinth Limited Partnership, Indeck-Olean Limited Partnership, Indeck-Oswego Limited Partnership, Indeck Energy Services of Silver Springs, Inc., Indeck-Yerkes Limited Partnership.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Indeck Corinth Limited Partnership, et al.

Filed Date: 9/10/26.

Accession Number: 20260910-5297.

Comment Date: 5 p.m. ET 10/26/26.

Docket Numbers: EC26-168-000.

Applicants: Prairie Solar 1, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Prairie Solar 1, LLC.

Filed Date: 9/10/26.

Accession Number: 20260910-5301.

Comment Date: 5 p.m. ET 10/1/26.

Docket Numbers: EC26-169-000.

Applicants: EnerSmart Mesa Heights BESS LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of EnerSmart Mesa Heights BESS LLC.

Filed Date: 9/11/26.

Accession Number: 20260911-5319.

Comment Date: 5 p.m. ET 10/2/26.

Docket Numbers: EC26-170-000.

Applicants: Greenbacker Renewable Energy Company LLC, MN8 Energy LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Greenbacker Renewable Energy Company LLC, et al.

Filed Date: 9/11/26.

Accession Number: 20260911-5321.

Comment Date: 5 p.m. ET 10/2/26.

Docket Numbers: EC26-171-000.

Applicants: Waterside Power, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Waterside Power, LLC.

Filed Date: 9/11/26.

Accession Number: 20260911-5323.

Comment Date: 5 p.m. ET 10/2/26.

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG26-315-000.

Applicants: CIG DS1 LLC.

⁸ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Description: CIG DS1 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/11/26.

Accession Number: 20260911–5275.

Comment Date: 5 p.m. ET 10/2/26.

Docket Numbers: EG26–316–000.

Applicants: Walker Solar LLC.

Description: Walker Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/11/26.

Accession Number: 20260911–5277.

Comment Date: 5 p.m. ET 10/2/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER19–1409–011.

Applicants: Birdsboro Power LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5232.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2150–010.

Applicants: Shawville Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5222.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2151–010.

Applicants: New Castle Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5211.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2152–010.

Applicants: Brunot Island Power,

LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5201.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2153–010.

Applicants: Gilbert Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5204.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2154–009.

Applicants: Sayreville Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5218.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2155–010.

Applicants: Portland Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5215.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2156–010.

Applicants: Warren Generation, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5231.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2157–010.

Applicants: Mountaintop Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5210.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2158–010.

Applicants: Orrtanna Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5214.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2159–010.

Applicants: Shawnee Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5221.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2160–010.

Applicants: Titus Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5223.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2161–010.

Applicants: Hamilton Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5207.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2162–010.

Applicants: Blossburg Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5200.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2163–010.

Applicants: Hunterstown Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5208.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER19–2164–011.

Applicants: Tolna Power, LLC.

Description: Refund Report: Refund

Report to be effective N/A.

Filed Date: 9/14/26.

Accession Number: 20260914–5227.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER24–2776–003.

Applicants: Southern California

Edison Company.

Description: Compliance filing;

WDAT Order 2023 Third Compliance

Filing to be effective 8/15/2024.

Filed Date: 9/14/26.

Accession Number: 20260914–5130.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–1761–002.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Compliance filing: 2026–

09–14 Compliance Rate Schedule 62

MISO–DEO–PJM CRAF Agmt to be

effective 6/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5116.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–1765–002.

Applicants: Duke Energy Ohio, Inc.

Description: Compliance filing:

Compliance Filing Regarding CRAF to

be effective 6/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5224.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–2921–002.

Applicants: Southwest Power Pool,

Inc.

Description: Tariff Amendment:

1977R23 Nemaha-Marshall Electric

Cooperative NITSA and NOA to be

effective 9/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5196.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–2934–002.

Applicants: Southwest Power Pool,

Inc.

Description: Tariff Amendment:

1885R17 Evergy Kansas Central, Inc.

NITSA NOA to be effective 9/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5169.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–2935–003.

Applicants: Southwest Power Pool,

Inc.

Description: Tariff Amendment:

1887R17 Evergy Kansas Central, Inc.

NITSA NOA to be effective 9/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5181.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–3064–002.

Applicants: Southwest Power Pool,

Inc.

Description: Tariff Amendment:

1276R42 Evergy Metro NITSA NOA

Amended to be effective 9/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5189.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–3762–000.

Applicants: Southwest Power Pool,

Inc.

Description: § 205(d) Rate Filing:

4325R1 SPS GIA to be effective 9/4/

2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5063.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–3763–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6912, and ICSA, SA No. 6913, Queue No. AD2–038 to be effective 11/14/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5124.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–3764–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO–NYSEG Joint 205: Standard IA Mineral Basin Solar SA2974 (CEII) to be effective 9/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5127.

Comment Date: 5 p.m. ET 10/5/26.

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: September 14, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–19069 Filed 9–16–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Nos: RP26–1252–000.

Applicants: Empire Pipeline, Inc.

Description: § 4(d) Rate Filing: Negotiated Rate—Waste Management to be effective 9/10/2026.

Filed Date: 9/10/26.

Accession Number: 20260910–5152.

Comment Date: 5 p.m. ET 9/22/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR26–42–002.

Applicants: Louisiana River Market, LLC.

Description: § 284.123 Rate Filing: Limited Jurisdiction Blanket Certificate—Compliance Filing to be effective 8/24/2026.

Filed Date: 9/11/26.

Accession Number: 20260911–5124.

Comment Date: 5 p.m. ET 10/2/26.

Docket Numbers: RP26–797–005.

Applicants: National Fuel Gas Supply Corporation.

Description: Compliance filing: RP26–797 Gathering & PAL Rate Sheets to be effective 6/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5096.

Comment Date: 5 p.m. ET 9/28/26.

Docket Numbers: RP26–1244–001.

Applicants: Spire Storage West LLC.

Description: Tariff Amendment: Stallion Gas Tariff amendment September 14 2026 to be effective 10/1/2026.

Filed Date: 9/14/26.

Accession Number: 20260914–5146.

Comment Date: 5 p.m. ET 9/28/26.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system ([https://](https://elibrary.ferc.gov/idmws/search/fercgensearch.asp)

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: September 14, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–19068 Filed 9–16–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–13619–01–OCSPP]

Pesticide Registration Review; Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's closure of the registration review cases for alpha-chlorohydrin; citral; delta-dodecalactone (2H-pyran-2-one, 6-heptyltetrahydro-); dicloran (DCNA); 1,7-dioxaspiro[5.5]undecane (olive fly sex pheromone); fenitrothion; ferbam; imazamethabenz; killed, non-viable *Streptomyces acidiscabies* strain RL-110T cells and spent fermentation media; *Lagenidium giganteum*; l-carvone; methiocarb; methyl-parathion; *Muscodor albus* strain SA-13 and spent and unspent fermentation media; neodecanamide, N-methyl; *Phoma macrostoma* strain 94-44B; 4-tertiary-Amylphenol and Salts (PTAP); trimedlure; and *Typhula phacorrhiza* strain # 94671 because the last U.S. registrations for these pesticides have been canceled.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 of Unit I.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: 202-566-0701; email address: biscoe.melanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

Pursuant to 40 CFR 155.42(c), this notice announces the availability of

EPA's case closures for the pesticides shown in Table 1. The registration review case closures are supported by rationales included in the docket for each chemical, if established.

TABLE 1—CASE CLOSURES BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Alpha-Chlorohydrin, Case Number 4120	EPA-HQ-OPP-2015-0726.	Antoine Gremaud, gremaud.antoine@epa.gov , (919) 541-5067.
Citral, Case Number 6314	EPA-HQ-OPP-2022-0301.	James Parker, parker.james@epa.gov , (202) 566-1594.
Delta-Dodecalactone (2H-pyran-2-one, 6-heptyltetrahydro-), Case Number 6354.	N/A ¹	James Parker, parker.james@epa.gov , (202) 566-1594.
Dicloran (DCNA) Case Number 0113	EPA-HQ-OPP-2016-0141.	Kent Fothergill, fothergill.kent@epa.gov , (202) 566-1943.
1,7-dioxaspiro [5.5] undecane (Olive Fly Sex Pheromone), Case Number 6369.	N/A ¹	James Parker, parker.james@epa.gov , (202) 566-1594.
Fenitrothion, Case Number 0445	EPA-HQ-OPP-2009-0172.	Theodore Varns, varns.theodore@epa.gov , (202) 566-2241.
Ferbam, Case Number 8000	EPA-HQ-OPP-2015-0567.	Caleb Carr, carr.caleb@epa.gov , (202) 566-0636.
Imazamethabenz, Case Number 7207	EPA-HQ-OPP-2014-0394.	Antoine Gremaud, gremaud.antoine@epa.gov , (919) 541-5067.
Killed, Non-Viable <i>Streptomyces acidiscabies</i> strain RL-110T Cells and Spent Fermentation Media, Case Number 6523.	EPA-HQ-OPP-2022-0779.	Andrew Queen, queen.andrew@epa.gov , (202) 566-1539.
<i>Lagenidium giganteum</i> , Case Number 6068	EPA-HQ-OPP-2011-0193.	Jeannine Kausch, kausch.jeannine@epa.gov , (202) 566-1533.
L-Carvone, Case Number 6306	EPA-HQ-OPP-2022-0392.	James Parker, parker.james@epa.gov , (202) 566-1594.
Methiocarb, Case Number 0577	EPA-HQ-OPP-2010-0278.	Rachel Fletcher, fletcher.rachel@epa.gov , (202) 566-2354.
Methyl-parathion, Case Number 0153	EPA-HQ-OPP-2009-0332.	Nicholas Geroux, geroux.nicholas@epa.gov , (202) 564-4093.
<i>Muscodor albus</i> strain SA-13 and Spent and Unspent Fermentation Media, Case Number 6303.	N/A ¹	Joseph Mabon, mabon.joseph@epa.gov , (202) 566-1535.
Neodecanamide, N-methyl, Case Number 7428	N/A ¹	Lauren Weissenborn, weissenborn.lauren@epa.gov , (202) 566-2374.
<i>Phoma macrostoma</i> strain 94-44B, Case Number 6524	N/A ¹	Jeannine Kausch, kausch.jeannine@epa.gov , (202) 566-1533.
4-tertiary-Amylphenol and Salts (PTAP), Case Number 3016	EPA-HQ-OPP-2012-0682.	Stephen Savage, savage.stephen@epa.gov , (202) 566-0616.
Trimedlure, Case Number 6045	EPA-HQ-OPP-2015-0616.	James Parker, parker.james@epa.gov , (202) 566-1594.
<i>Typhula phacorrhiza</i> strain # 94671, Case Number 6546	N/A ¹	Jeannine Kausch, kausch.jeannine@epa.gov , (202) 566-1533.

¹ EPA did not establish a docket for this case because all products were voluntarily canceled by the registrants, before the registration review assessments were initiated.

II. Background

EPA is conducting its registration review of the chemicals listed in Table 1 of Unit I pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(g) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that pesticide registrations are to be reviewed every 15 years. Consistent with 40 CFR 155.57, in its final registration review decision, EPA will ultimately determine whether a pesticide continues to meet the registration standard in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). As part of the registration review process, the

Agency has completed case closures for the pesticides in Table 1 of Unit I because all products in the cases are cancelled.

For additional background on the registration review program, see: <https://www.epa.gov/pesticide-reevaluation>.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 14, 2026.

Jean Anne Overstreet,

Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2026-19064 Filed 9-16-26; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings: Notice of Meeting To Be Held With Less Than Seven Days' Advance Notice

TIME AND DATE: 10:00 a.m. on September 17, 2026.

PLACE: This Board meeting will be open to public observation by webcast. Visit <https://www.fdic.gov/news/board-matters/video.html> for a link to the webcast. Members of the media should contact the Office of Communications by Wednesday, September 16, 2026, at mediarequests@fdic.gov to attend in person. FDIC Board Members and staff will participate from FDIC

Headquarters, 550 17th Street NW, Washington, DC.

Observers requiring auxiliary aids should email DisabilityProgram@fdic.gov to make necessary arrangements.

STATUS: Open to public observation via webcast.

MATTERS TO BE CONSIDERED: The Federal Deposit Insurance Corporation's (FDIC) Board of Directors will meet to consider the following matters:

Discussion Agenda

Notice of Proposed Rulemaking: Merger Transactions.

Notice of Proposed Rulemaking: State Bank Parity.

Summary Agenda

No substantive discussion of the following item is anticipated. The Board of Directors will resolve this matter with a vote unless a member of the Board requests that this item be moved to the discussion agenda.

Rescission of Board Statement on the Development and Communication of Supervisory Recommendations.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Hanoi Veras, Executive Secretary, FDIC, at FDICBoardMatters@fdic.gov.
Authority: 5 U.S.C. 552b.

Dated at Washington, DC, on September 15, 2026.
Federal Deposit Insurance Corporation.

Hanoi Veras,

Executive Secretary.

[FR Doc. 2026-19075 Filed 9-15-26; 4:15 pm]

BILLING CODE 6714-01-P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust

Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[07/01/2026 through 08/31/2026]

07/02/2026

20261585	G	Autodesk, Inc.; MaintainX Inc.; Autodesk, Inc.
20261588	G	James R. Murdoch; Vox Media Holdings, Inc.; James R. Murdoch.
20261591	G	Flat Footed Series LLC—Fund 3; Grifols, S.A.; Flat Footed Series LLC—Fund 3.
20261594	G	Magnetar Opportunity 2025-4 LP; TensorWave Inc.; Magnetar Opportunity 2025-4 LP.
20261613	G	Apollo S3 Equity & Hybrid Solutions Fund, L.P.; Monogram Capital Partners II, L.P.; Apollo S3 Equity & Hybrid Solutions Fund, L.P.
20261625	G	Butterfly II-A, LP; Graham Partners VI, L.P.; Butterfly II-A, LP.
20261627	G	Butterfly II-A, LP; The 2026 Wendling Irrevocable Trust; Butterfly II-A, LP.
20261633	G	Gridiron Capital Fund V, L.P.; Centroid Cumulus LLC; Gridiron Capital Fund V, L.P.
20261639	G	Oakley Capital VI-B2 SCS; Bain Capital Europe Fund V, SCS; Oakley Capital VI-B2 SCS.
20261641	G	Weatherford International plc; Advent-NCS Acquisition L.P.; Weatherford International plc.
20261643	G	Servier S.A.S.; Edgewise Therapeutics, Inc.; Servier S.A. S.
20261652	G	Enel S.p.A.; Dominion Energy, Inc.; Enel S.p.A.
20261662	G	Christopher James; Chevron Corporation; Christopher James.
20261663	G	Shibaura Machine Co., Ltd.; The PMT Group, Inc.; Shibaura Machine Co., Ltd.
20261690	G	Joshua Harris; LKCM Headwater Investments II, L.P.; Joshua Harris.

07/09/2026

20261655	G	Healthcare Revolution Partners, L.P.; Jason Borschow; Healthcare Revolution Partners, L.P.
20261682	G	TAO Finance 3, LLC; Kpler Holding, SA; TAO Finance 3, LLC.
20261689	G	RCP Yukon Investments LP; Eide Bailly LLP; RCP Yukon Investments LP.
20261710	G	Percheron Horsepower-A LP; Robert F. Barnes; Percheron Horsepower-A LP.
20261711	G	Percheron Horsepower-A LP; Donald H. Barnes Jr.; Percheron Horsepower-A LP.
20261726	G	KIA XI Bison-BDI Co-Investment, L.P.; Forge Industries, Inc.; KIA XI Bison-BDI Co-Investment, L.P.
20261727	G	CVC Catalyst III (A) L.P.; WillowWood Parent LLC; CVC Catalyst III (A) L.P.

07/10/2026

20260802	G	Maximilian Viessmann; Everidge, Inc.; Maximilian Viessmann.
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07/13/2026

20261430	G	Rome Wildlife, Inc.; RE/MAX Holdings, Inc.; Rome Wildlife, Inc.
20261431	G	David Liniger; Rome Wildlife, Inc.; David Liniger.
20261432	G	David Liniger; RE/MAX Holdings, Inc.; David Liniger.
20261433	G	RE/MAX Holdings, Inc.; David Liniger; RE/MAX Holdings, Inc.

EARLY TERMINATIONS GRANTED—Continued

[07/01/2026 through 08/31/2026]

07/16/2026

20261675	G	Novanta Inc.; Arlington Capital Partners V, L.P.; Novanta Inc.
20261685	G	Accenture plc; HD Moore; Accenture plc.
20261688	G	Bridgepoint Europe VII Investments S.a r.l.; Waldencast plc; Bridgepoint Europe VII Investments S.a r.l.
20261698	G	Deutsche Telekom AG; Future Fiber Parent, L.P.; Deutsche Telekom AG.
20261722	G	Merck & Co., Inc.; Targan, Inc.; Merck & Co., Inc.
20261763	G	Alan Yung; The Consolidated Mill Supply, Inc. Employee Stock; Alan Yung.

07/17/2026

20261513	G	SLB N.V. (SLB Limited); S&P Global Inc.; SLB N.V. (SLB Limited).
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07/21/2026

20261686	G	ExlService Holdings, Inc.; i merit inc.; ExlService Holdings, Inc.
20261687	G	Clearlake Capital Partners VI, L. P.; Paul Gertner; Clearlake Capital Partners VI, L.P.
20261691	G	Otro Capital Fund I-A, LP; EFC2 Capital, L.P.; Otro Capital Fund I-A, LP.
20261703	G	Build HoldCo LLC; ASP VIII Alternative Investments, L.P.; Build HoldCo LLC.
20261714	G	General Atlantic Partners (Ontario) AIV II, L.P.; ICEYE Oy; General Atlantic Partners (Ontario) AIV II, L.P.
20261719	G	Figure Technology Solutions, Inc.; Kiavi, Inc.; Figure Technology Solutions, Inc.
20261742	G	SIPCO Holdings Limited; M536, Inc.; SIPCO Holdings Limited.
20261743	G	Standard BioTools, Inc.; Treeline Biosciences, Inc.; Standard BioTools, Inc.
20261745	G	Audax Private Equity Origins Fund I, L.P.; Imperial Capital Acquisition Fund VIII (Canada), LP; Audax Private Equity Origins Fund I, L.P.
20261753	G	H&F Manuka Lux S.a r.l.; Providence Equity Partners IX L. P.; H&F Manuka Lux S.a r.l.
20261754	G	Par Health, Inc.; Keenova Therapeutics plc; Par Health, Inc.
20261764	G	TDK Corporation; Fabric8Labs, Inc.; TDK Corporation.
20261771	G	Harbert Power Fund VII, LP; Rockland Power Partners IV, LP; Harbert Power Fund VII, LP.
20261777	G	Wynnchurch Capital Partners VI, L.P.; Wynnchurch Capital Partners IV, L.P.; Wynnchurch Capital Partners VI, L.P.
20261778	G	TMX Group Limited; Research Affiliates Global Holdings LLC; TMX Group Limited.

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20260922	S	IonQ, Inc.; SkyWater Technology, Inc.; IonQ, Inc.
20261756	G	Enstructure Holdco LLC; BW Phoenix Co-Invest, L.P.; Enstructure Holdco LLC.
20261757	G	Platinum Equity Small Cap Fund II, L.P.; Grand Appliance, Inc.; Platinum Equity Small Cap Fund II, L.P.
20261761	G	Matthew Holt; Ensemble Health Partners Holdings, LLC; Matthew Holt.
20261765	G	LongRange Capital Fund I, L.P.; Yum! Brands, Inc.; LongRange Capital Fund I, L.P.
20261766	G	HP Prestige Aggregator, LP; Health Catalyst, Inc.; HP Prestige Aggregator, LP.
20261773	G	Walmart Inc.; Vibe SAS; Walmart Inc.
20261774	G	Relevate Parent Holdings, LP; Relevate Holdings, LP; Relevate Parent Holdings, LP.
20261783	G	Korn Ferry; OMERS Administration Corporation; Korn Ferry.
20261796	G	Schneider Electric SE; AiDash Inc.; Schneider Electric SE.
20261799	G	Neon Maple Parent Inc.; Payoneer Global Inc.; Neon Maple Parent Inc.
20261801	G	ARX Parent Holdings, LP; Flexpoint Fund IV-A, L.P.; ARX Parent Holdings, LP.
20261805	G	BCPE (E) Nikolaus Co-Invest, SCSp; Ferdinand Porsche Familien-Privatstiftung; BCPE (E) Nikolaus Co-Invest, SCSp.
20261806	G	Triton Fund 6 SCSp; Carlyle Europe Partners V, S.C.Sp.; Triton Fund 6 SCSp.
20261807	G	Charles W. Ergen; Innovate Corp.; Charles W. Ergen.
20261810	G	Churchill Capital Corp XI; Agility Robotics, Inc.; Churchill Capital Corp XI.
20261813	G	Versant Media Group, Inc.; Bruin Sports Capital Holdings, LLC; Versant Media Group, Inc.
20261814	G	The Resolute Fund VI, L.P.; Luna Innovations Incorporated; The Resolute Fund VI, L.P.
20261815	G	Adobe Inc.; Eric Yang; Adobe Inc.
20261822	G	Gerald Simonson; Arcline Double Eagle Master Fund LP; Gerald Simonson.
20261823	G	SLG SPAC Fund LLC; ZincFive, Inc.; SLG SPAC Fund LLC.
20261834	G	Biogen Inc.; RayThera, Inc.; Biogen Inc.

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20261830	G	Zymeworks Inc.; Theravance Biopharma, Inc.; Zymeworks Inc.
20261831	G	Gabriel Mecklenburg; Hinge Health, Inc.; Gabriel Mecklenburg.
20261833	G	Lightyear Fund VI-A, L.P.; NDH Parent, LLC; Lightyear Fund VI-A, L.P.
20261837	G	Desmarais Family Residuary Trust; Milliman, Inc.; Desmarais Family Residuary Trust.
20261838	G	TSG9 L.P.; Ben Bennett; TSG9 L.P.
20261844	G	ISQ Global Infrastructure Fund IV, L.P.; SK Capital Partners VI-A, L.P.; ISQ Global Infrastructure Fund IV, L.P.
20261845	G	Stichting Administratiekantoor FGI; Martin Marietta Materials, Inc.; Stichting Administratiekantoor FGI.

EARLY TERMINATIONS GRANTED—Continued

[07/01/2026 through 08/31/2026]

20261846	G	Martin Marietta Materials, Inc.; Stichting Administratiekantoor FGI; Martin Marietta Materials, Inc.
20261847	G	Macquarie Strategic Opportunities Fund SCS; MidOcean Partners VI, L.P.; Macquarie Strategic Opportunities Fund SCS.
20261849	G	Odyssey Investment Partners Fund VI, L.P.; John Mark Hicks; Odyssey Investment Partners Fund VI, L.P.
20261857	G	CVC Capital Partners IX (A) L.P.; DK Holdco, LLC; CVC Capital Partners IX (A) L.P.
20261858	G	SkyKnight Capital Fund IV, L.P.; FFL Capital Partners V, L.P.; SkyKnight Capital Fund IV, L.P.
20261861	G	General Atlantic Partners 100, L.P.; SambaNova Systems, Inc.; General Atlantic Partners 100, L.P.
20261870	G	Accenture plc; Bain Capital Europe Fund V SCSP; Accenture plc.
20261871	G	Accenture plc; Renaissance Partners S.a.r.l. SICAV-RAIF; Accenture plc.
20261872	G	Enerpac Tool Group Corp.; Robert W. Muir, Jr.; Enerpac Tool Group Corp.
20261873	G	Novartis AG; Myricx Pharma Limited; Novartis AG.
20261876	G	Blackstone Energy Transition Partners V L.P.; FR Industrials Opportunities Fund, L.P.; Blackstone Energy Transition Partners V L.P.
20261882	G	Partners Group Access PF 787 LP; Ares Energy Investors Fund V, L.P.; Partners Group Access PF 787 LP.
20261884	G	Genstar Capital Partners XI, L.P.; Hudson29 LLC; Genstar Capital Partners XI, L.P.
20261885	G	Eli Lilly and Company; Oura Inc.; Eli Lilly and Company.
20261893	G	The Resolute Fund VII, L.P. c/o TJC, L.P.; Trilantic Capital Partners Prime (North America) L.P.; The Resolute Fund VII, L.P. c/o TJC, L.P.
20261897	G	Hanwa Company Limited; Associated Group Holdings, LLC; Hanwa Company Limited.
20261899	G	Partners Group Client Access 39, L.P. Inc.; Robert D. McIntyre; Partners Group Client Access 39, L.P. Inc.

08/05/2026

20261045	G	Permira VII L.P.1; Highspot, Inc.; Permira VII L.P.1.
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08/10/2026

20251658	G	Bouygues S.A.; Frank H. Suits, Jr.; Bouygues S.A.
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08/12/2026

20261868	G	GTCR Fund XIV/B LP; Reveal Holdco, LLC; GTCR Fund XIV/B LP.
20261869	G	GIP Mid-Market Fund V B-2, SCSP; Summit Ridge Energy, LLC; GIP Mid-Market Fund V B-2, SCSP.
20261875	G	ON Semiconductor Corporation; Synaptics Incorporated; ON Semiconductor Corporation.
20261888	G	Solstice Advanced Materials Inc.; Element Solutions Inc; Solstice Advanced Materials Inc.
20261890	G	Vertex Pharmaceuticals Incorporated; Crinetix Pharmaceuticals, Inc.; Vertex Pharmaceuticals Incorporated.
20261901	G	Bridgepoint Group plc; Albert Rabil III; Bridgepoint Group plc.
20261902	G	Bridgepoint Group plc; Kayne Anderson Capital Advisors, L.P.; Bridgepoint Group plc.
20261904	G	Invidia Bright Topco LP; Massimo Musa; Invidia Bright Topco LP.
20261912	G	SFS group AG; Heartland Precision Fasteners Seller, Inc.; SFS group AG.
20261916	G	H2O America; Quadvest, L.P.; H2O America.
20261925	G	Merit France SAS; FedEx Corporation; Merit France SAS.
20261927	G	GI DI Odyssey Holdings LP; Renovo Capital Fund III, L.P.; GI DI Odyssey Holdings LP.
20261932	G	Audax Private Equity Fund IV CF, L.P.; American Pacific Group Fund II, L.P.; Audax Private Equity Fund IV CF, L.P.
20261945	G	TA Constellation Aggregator, L.P.; Sumit Babulal Gupta; TA Constellation Aggregator, L.P.

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20261908	G	Accel-KKR Capital Partners VII, LP; SCP VMS Holdings, LLC; Accel-KKR Capital Partners VII, LP.
20261920	G	America First Federal Credit Union; Greater Nevada Credit Union; America First Federal Credit Union.
20261924	G	Consonance Private Equity II, L.P.; Innovative Health LLC; Consonance Private Equity II, L.P.
20261926	G	Seattle Football, LLC; Estate of Paul G. Allen; Seattle Football, LLC.
20261938	G	Array Technologies, Inc.; Scott Rand; Array Technologies, Inc.
20261942	G	The Veritas Capital Fund IX, L.P.; CCMP Capital Investors III CV, L.P.; The Veritas Capital Fund IX, L.P.
20261943	G	Dot Family Holdings, LLC; Cameron W&C Investor, LLC; Dot Family Holdings, LLC
20261944	G	S&P Global Inc.; Leeds Equity Partners VI, L.P.; S&P Global Inc.
20261946	G	CVC Capital Partners IX (A) L.P.; AI Global Investments II & Cy S.C.A.; CVC Capital Partners IX (A) L.P.
20261955	G	LKCM Headwater Investments IV, L.P.; Distribution Solutions Group, Inc.; LKCM Headwater Investments IV, L.P.
20261956	G	Crucible Topco, L.P.; H.I.G. Middle Market LBO Fund III, L.P.; Crucible Topco, L.P.
20261957	G	Acciona, S.A.; VE Holdco, LLC; Acciona, S.A.
20261961	G	KKR Global Infrastructure Investors V (USD) SCSP; Electricite de France S.A.; KKR Global Infrastructure Investors V (USD) SCSP.

EARLY TERMINATIONS GRANTED—Continued

[07/01/2026 through 08/31/2026]

20261962	G	Watco Holdings, Inc.; Kinder Morgan, Inc.; Watco Holdings, Inc.
20261964	G	ScanSource, Inc.; MAAC Group, LLC; ScanSource, Inc.
20261965	G	Verde Operating Company, LLC; Vitol Holding II S.A.; Verde Operating Company, LLC.
20261967	G	Sompo Holdings, Inc.; Service Insurance Holdings, Inc.; Sompo Holdings, Inc.
20261980	G	Magnolia Oil & Gas Corporation; WildFire Energy I LLC; Magnolia Oil & Gas Corporation.
20261983	G	BCP Fund III, LP; Sentinel Capital Partners V, L.P.; BCP Fund III, LP.
20261993	G	Everus Construction Group, Inc.; Epsilon Omega Holdco Inc.; Everus Construction Group, Inc.
20261997	G	Hillman Solutions Corp.; McGrath 2020 Family Trust, dated December 7, 2020; Hillman Solutions Corp.

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20261978	G	Altaris Health Partners VI, L.P.; Clarivate Plc; Altaris Health Partners VI, L.P.
20261998	G	Align Capital Partners Fund III, LP; River VII, L.P.; Align Capital Partners Fund III, LP.
20261999	G	BCP 8 Emerald DE Feeder Aggregator L.P.; May River Fund I, LP; BCP 8 Emerald DE Feeder Aggregator L.P.
20262008	G	Lindsay Goldberg VI L.P.; Randal Glick; Lindsay Goldberg VI L.P.
20262011	G	MN8 Energy Holdings LLC; Greenbacker Renewable Energy Company LLC; MN8 Energy Holdings LLC.
20262013	G	NextCure, Inc.; Avere Therapeutics, Inc.; NextCure, Inc.
20262016	G	Lone Star Fund XIII, L.P.; Continental Aktiengesellschaft; Lone Star Fund XIII, L.P.
20262017	G	Progress Software Corporation; Joshua G. James; Progress Software Corporation.
20262023	G	Tarsus Pharmaceuticals, Inc.; Leonide Saad; Tarsus Pharmaceuticals, Inc.
20262028	G	PBF Energy Inc.; Air Products and Chemicals, Inc.; PBF Energy Inc.
20262034	G	Xylem Inc.; EagleTree-WaterFleet Investment, L.P.; Xylem Inc.

08/26/2026

20262039	G	American Securities Partners IX(B), L.P.; WeldFit LLC; American Securities Partners IX(B), L.P.
20262045	G	Silicon Valley Acquisition Corp.; Tikdema Trust 2025; Silicon Valley Acquisition Corp.
20262049	G	Expand Energy Corporation; Five Point Natural Gas Yield Fund I LP; Expand Energy Corporation.
20262064	G	Permian Basin Royalty Trust; NGP Natural Resources XI, L.P.; Permian Basin Royalty Trust.
20262069	G	SoftVest, L.P.; Permian Basin Royalty Trust; SoftVest, L.P.

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20260787	S	Controladora Vuela Compania de Aviacion, S.A.B. de C.V.; Autobuses de la Piedad, S.A. de C.V.; Controladora Vuela Compania de Aviacion, S.A.B. de C.V.
20260788	S	Controladora Vuela Compania de Aviacion, S.A.B. de C.V.; Inversionistas en Transportes Grupo Toluca, S.A. de C.V.; Controladora Vuela Compania de Aviacion, S.A.B. de C.V.

FOR FURTHER INFORMATION CONTACT:
Theresa Kingsberry (phone: 202–326–3100), Program Support Specialist, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, Washington, DC 20024.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2026–19024 Filed 9–16–26; 8:45 am]

BILLING CODE 6750–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 109142026–1111–02]

Notice of Proposed Subaward Under a Council-Selected Restoration Component Award

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) publishes

notice of a proposed subaward from the U.S. Department of the Interior (DOI) to the Texas A & M University Corpus Christi, HARTE Research Institute (HRI), a nongovernmental organization, for the purpose of planning and prioritizing rookery island restoration in accordance with the Colonial Waterbird Rookery Island Restoration Project as approved in the Council's 2026 Funded Priorities List (FPL).

FOR FURTHER INFORMATION CONTACT:
Please send questions by email to Victoria Schenk at victoria.schenk@restorethegulf.gov or (504) 874–3923.

SUPPLEMENTARY INFORMATION:

Section 1321(t)(2)(E)(ii)(III) of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies Act of 2012* (33 U.S.C. 1321(t) and *note*) (RESTORE Act) and the Department of the Treasury's implementing regulation at 31 CFR 34.401(b) set forth certain notice and publication requirements. They require that for purposes of awards made under the Comprehensive Plan Component of

the RESTORE Act, a State or Federal award recipient may make a subaward to or enter into a cooperative agreement with a nongovernmental entity that equals or exceeds 10 percent of the total amount of the award only if at least 30 days before the State or Federal award recipient enters into such an agreement, the Council publishes in the **Federal Register** and delivers to specified Congressional committees the name of the recipient and subrecipient; a brief description of the activity, including its purpose; and the amount of the award. This notice accomplishes the **Federal Register** publication requirement.

Description of Proposed Action

As specified in the 2026 FPL, which is available on the Council's website at <https://www.restorethegulf.gov/our-work/fpl/fpl-2026/>, RESTORE Act funds in the amount of \$600,000.00 will support the Colonial Waterbird Rookery Island Restoration Project through an Interagency Agreement (IAA) with DOI. DOI will provide a subaward in the

amount of \$200,000.00 to HRI. HRI will establish a Project Advisory Committee, convene its meetings, document the proceedings, and evaluate and rank potential projects based on their success potential. HRI will develop a site restoration plan incorporating the work from professional engineers. Each plan will include an adaptive monitoring plan to document the effectiveness of the techniques and actions used to restore habitat for colonial nesting waterbirds.

Keala J. Hughes,

*Director of External Affairs & Tribal Relations,
Gulf Coast Ecosystem Restoration Council.*

[FR Doc. 2026–19029 Filed 9–16–26; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3483–FN]

Medicare and Medicaid Programs; Application From DNV Healthcare USA Inc. (DNV) for Continued CMS- Approval of its Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice acknowledges the approval of an application from DNV Healthcare USA Inc. (DNV) for continued CMS recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this notice is effective September 26, 2026, through September 26, 2032.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, Lillian.Williams@cms.hhs.gov, and (410) 786–8636 CMS AO Application Team AO_Applications@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital, provided certain requirements are met. Section 1861(e) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The

regulations at 42 CFR part 482 specify the minimum conditions that a hospital must meet to participate in the Medicare program.

Generally, to enter into an agreement with Medicare, a hospital must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 482 of our regulations. Thereafter, the hospital is subject to regular surveys by an SA to determine whether it continues to meet these requirements. However, there is an alternative to surveys by SAs.

Section 1865(a)(1)(A) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare requirements are met or exceeded, we will deem that provider entity to have met such requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that meet or exceed the Medicare conditions. "Deemed status" is defined at § 488.1, and it means that CMS has certified that a provider or supplier for Medicare participation based on the fact it has been accredited by a CMS-approved AO and met other participation requirements to become a "deemed" provider or supplier.

CMS reviews the standards and processes utilized by such AOs periodically, and if CMS determines that the AO's standards and processes meet or exceed those used by CMS surveyors, CMS grants or renews "deeming authority" to the AO for certain types of providers and suppliers, as outlined within this notice. Any provider or supplier thereafter surveyed by such approved AO and found to have met Medicare's regulatory standards is recognized by CMS as a "deemed" provider or supplier. Our regulations concerning the approval of AOs are set forth at §§ 488.4 and 488.5. The regulation at § 488.5(e)(2)(i) permits CMS to approve or re-approve an AO

application for a period not to exceed 6 years.

DNV's current term of approval for their hospital accreditation program expires September 26, 2026.

II. Application Review Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete the application review process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On April 9, 2026, we published a proposed notice in the **Federal Register** (91 FR 17970), announcing DNV Healthcare USA Inc.'s (DNV's) request for continued approval of its Medicare hospital accreditation program. CMS approves or denies an AO's application based on an assessment of the factors stated, which may include, but is not limited to, a review of the information required to be submitted by the AO, interviews with AO staff, an evaluation of the AO's survey process and findings, or other activities necessary to determine that the AO meets the requirements set forth at §§ 488.4 and 488.5. Under Section 1865(a)(2) of the Act and in our regulations at § 488.5 and § 488.8(h), we reviewed DNV's Medicare hospital application in accordance with the criteria specified by our regulations, which included an assessment of the following:

- DNV's (1) corporate policies; (2) financial viability; (3) ability to investigate and respond appropriately to allegations of violations of the Medicare program requirements; and (4) survey review and decision-making process.
- Survey processes to confirm that they are comparable to SAs' survey processes, and DNV can adequately assess whether a provider or supplier meets or exceeds the Medicare program requirements.
- The composition of the survey team.
- Procedures for monitoring deemed hospitals it has found to be out of

compliance with DNV's program requirements.

- Ability to report deficiencies to the surveyed hospital and respond to the hospital's plan of correction in a timely manner.

- Verification of DNV's agreement to provide CMS with a copy of the most current accreditation survey, together with any other information related to the survey as we may require, including corrective action plans.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with Section 1865(a)(3)(A) of the Act, on April 9, 2026, the proposed notice solicited public comments regarding whether DNV's requirements met or exceeded the Medicare conditions for hospitals. CMS received several comments, all of which supported the continued approval of DNV's hospital accreditation program. Commenters described DNV as fair, thorough, and knowledgeable of applicable standards and noted that its accreditation program supports hospital quality, patient safety, and effective hospital management. We thank the commenters for their input and have considered it when making our decision.

V. Provisions of the Final Notice

A. Differences Between DNV's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We assessed DNV's hospital accreditation requirements and survey process in comparison with the Medicare CoPs of part 482 and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of DNV's hospital application, which were conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this final notice, DNV has completed revising its documentation in order to meet our requirements by:

- Revising the Survey Report and Corrective Action Plan Submittal Form to include an allowance for the Fire Safety Evaluation System (FSES) and revising the survey guidance to address the FSES process, required documentation, survey resubmittal requirements, and approval process.

- Revising the inspection, testing, and maintenance frequency guidance to define quarterly, semiannual, annual, 3-year, and 5-year frequencies consistent with CMS requirements and clarifying that the specified frequency is required unless otherwise permitted by the

manufacturer or applicable National Fire Protection Association (NFPA) codes and standards.

B. Term of Approval

Based on our review and observations described in sections III. and V. of this final notice, we find that DNV provides reasonable assurance that accredited entities would meet or exceed the applicable Medicare conditions and we approve DNV as a national AO for hospitals that request participation in the Medicare program. The decision announced in this final notice is effective September 26, 2026, through September 26, 2032 (6 years). In accordance with § 488.5(e)(2)(i), the term of the approval will not exceed 6 years.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Mehmet Oz, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Center for Medicare & Medicaid Services.

[FR Doc. 2026-19061 Filed 9-16-26; 8:45 am]

BILLING CODE 4169-69-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Office of Management and Budget #: 0970-0642]

Proposed Information Collection Activity; Diaper Distribution Demonstration and Research Pilot Beneficiary and Organizational Survey and Beneficiary Report

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Community Services (OCS), Administration for

Children and Families (ACF), Department of Health and Human Services, is proposing to continue to collect data to understand diaper need and outcomes for beneficiaries of the Diaper Distribution Demonstration and Research Pilot (DDDRP). This collection (Office of Management and Budget (OMB) #: 0970-0642) currently includes the Beneficiary Report and Beneficiary Survey. No changes are proposed to the Beneficiary Report. OCS is proposing revisions to the Beneficiary Survey and proposes adding a new Organizational Survey.

DATES: Comments due November 16, 2026.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This notice is to invite public comments on OCS's proposal to revise the Beneficiary Survey, introduce a survey of grant recipients and their partners, and to continue to use the Beneficiary Report with no changes. This revision request would extend approval of information collection activities for an additional 3 years.

The DDRP beneficiary survey was developed to examine diaper need and outcomes for beneficiaries served by DDRP. It was piloted under the Formative Data Collections for ACF Program Support umbrella generic (OMB #: 0970-0531) with the first three cohorts of DDRP grant recipients. To continue to learn about the people who receive grant services and the extent to which they achieve expected short-term outcomes, the updated proposed survey includes two versions: An enrollment version and a follow-up version.

- The Enrollment Version of the Beneficiary Survey is a revised version of the current Beneficiary Survey. This version will continue to collect demographic data on the children served and caregivers enrolling in the program; information about the employment, education, and income of caregivers; and indicators of diaper need. The survey has been revised to also include contact information for the caregiver, early learning environment participation of children, and diaper-related health. The survey has also been revised to remove several items that proved to be not informative enough to

warrant participant burden or that are inconsistent with administration priorities, including the size diaper each child wears, the language the caregiver speaks, and whether the caregiver is a single parent.

- The Follow up Version of the Beneficiary Survey is a new wave of collection for the survey, but it reduces the number of demographic items to focus on repeated measurement of employment, education, income, early learning environment participation, diaper need, and diaper health. It continues to collect contact information to ensure accurate individual-level linking of data across the two waves.

The DDDRDP beneficiary report is a report submitted by grant recipients every 6 months that includes information on beneficiary characteristics and outcomes collected by grant recipient partners from beneficiaries. There are no changes proposed to this report.

Finally, the Organizational Survey is a new tool OCS has developed to capture baseline and follow-up data from grant recipients and partners to understand the extent to which participation in the DDDRDP has improved organizational capacity to serve beneficiaries. It is based on findings from a recent implementation study that indicated what skills, capacities and knowledge previous DDDRDP grant recipients and partners needed to have/develop to be successful.

Information collection materials will be translated into Spanish and may be

translated into additional languages if necessary, based on beneficiaries enrolled by grant recipients. ACF acknowledges that English is the official language and authoritative version of all federal information and will note this on the translated material.

Respondents: Respondents for the Beneficiary Survey are the caregivers enrolling their family members with diaper needs in DDDRDP services. Respondents for the Beneficiary Report are the grant recipients and their partners who collect and compile the data, as well as the beneficiaries who provide information about their characteristics and outcomes. Respondents to the Organizational Survey are staff at grant recipient and partner organizations most familiar with the execution of the grant. Annual Burden Estimates

The estimated burden for the currently approved information collection activities is 8,178.89 hours. The estimated burden of this revised information collection is 5,185.83 hours, a 36 percent reduction in burden. OCS made several changes to survey instruments and fielding to reduce overall burden:

- **Beneficiary Survey—Enrollment Version:** OCS identified items in the Beneficiary Survey that were not informative enough for the evaluation to warrant participant burden or consistent with administration priorities. Specifically, OCS removed 6 currently approved survey questions. OCS also identified opportunities to program the

Beneficiary Survey with new skip patterns, looping and pre-population of questions to reduce time needed to answer items. These changes led to a reduced burden estimate of up to 9 minutes per respondent (reduced from 10 minutes per respondent in the prior information collection). Additionally, OCS reduced the overall number of beneficiaries who will participate in the survey. In this revised request, OCS will only collect Beneficiary Survey data from beneficiaries who enroll during a defined 1-year period during the grant recipient's program.

- **Beneficiary Report—Grant Recipients:** OCS reduced the overall number of grant recipients who will need to collect information from beneficiaries and fill out the beneficiary reports, based on upcoming planned funding competitions.

- **Beneficiary Report—Partners:** OCS reduced the number of potential partners anticipated based on current reporting practices for grant recipients and new programmatic recommendations to collaborate with four or fewer partners. Previously, grant recipients were allowed to partner with as many organizations as desired.

- **Beneficiary Report—Beneficiaries:** OCS anticipates that fewer beneficiaries will need to provide information for the Beneficiary Report compared to the prior information collection as there are fewer grant recipients operating during this information collection period overall.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Beneficiary Survey—enrollment version	10,400	1	.15	1,560	520.00
Beneficiary Survey—follow-up version	9,100	1	.13	1,183	394.33
Organizational Survey—baseline version	70	1	.33	23.1	7.7
Organizational Survey—follow-up version	70	1	.25	17.5	5.83
Beneficiary Report—Grant Recipients	25	6	3	450	150.00
Beneficiary Report—Partners	113	6	10	6,780	2,260.00
Beneficiary Report—Beneficiaries	33,397	2	.083	5,543.9	1,847.97
Estimated Total Annual Burden Hours					5,185.83

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 1110, Social Security Act, 42 U.S.C. 1310.

Samantha L. Illangasekare,

ACF/OPRE Certifying Officer.

[FR Doc. 2026–19023 Filed 9–16–26; 8:45 am]

BILLING CODE 4184–26–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2732]

Recommendations for the Development of Blood Collection, Processing, and Storage Systems for the Manufacture of Blood Components Using the Buffy Coat Method; 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 titled “Recommendations for the Development of Blood Collection, Processing, and Storage Systems for the Manufacture of Blood Components Using the Buffy Coat Method.” The guidance document provides recommendations on the development of blood collection, processing, and storage systems (e.g., blood bags with anticoagulant and additive solutions, empty bags for platelet pooling) intended for the manufacture of blood and blood components for transfusion using the buffy coat (BC) method and on regulatory submissions to FDA for such products. This guidance is intended for manufacturers of blood collection, processing, and storage systems. The guidance announced in this notice finalizes the draft guidance of the same title dated October 18, 2024.

DATES: The announcement of the guidance is published in the **Federal Register** on September 17, 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-2732 for “Recommendations for the Development of Blood Collection, Processing, and Storage Systems for the Manufacture of Blood Components Using the Buffy Coat Method.” 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 guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3103, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The 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 guidance document.

FOR FURTHER INFORMATION CONTACT:

Melissa Segal, Center for Biologics Evaluation and Research, Food and Drug Administration, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance titled “Recommendations for the Development of Blood Collection, Processing, and Storage Systems for the Manufacture of Blood Components Using the Buffy Coat Method.” This guidance provides recommendations on the development of blood collection, processing, and storage systems (e.g., blood bags with anticoagulant and additive solutions, empty bags for platelet pooling) intended for the manufacture of blood and blood components for transfusion using the BC method and on regulatory submissions to FDA for such products. This guidance is intended for manufacturers of blood collection, processing, and storage systems.

Blood and blood components must be prepared in a manner consistent with

the instructions provided by the manufacturer (21 CFR 606.65(e)), including the directions provided in the instructions for use of the approved or cleared collection, processing, and storage system. To prepare blood components using the BC method, blood establishments must use blood collection, processing and storage systems approved or cleared for such use.

This guidance provides recommendations to manufacturers who wish to obtain FDA approval or clearance to market blood collection, processing, and storage systems intended for the manufacture of blood components for transfusion using the BC method. With the availability of such FDA-approved or cleared systems, blood establishments in the United States would have the option of manufacturing Whole Blood-derived blood components using the BC method and licensed blood establishments could submit Biologics License Application (BLA) supplements to FDA.

In the **Federal Register** of October 18, 2024, (89 FR 83886), FDA announced the availability of the draft guidance of the same title dated October 18, 2024. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In response to comments received, FDA made several clarifying edits. For example, FDA made clarifying revisions regarding timeframes for overnight ambient temperature holds, use of additive solutions that are currently not approved by FDA, and efforts to transition to systems that do not contain di(2-ethylhexyl) phthalate (DEHP). In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated October 18, 2024.

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 "Recommendations for the Development of Blood Collection, Processing, and Storage Systems for the Manufacture of Blood Components Using the Buffy Coat Method." 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 new collections 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 part 312.47 relating to the submission of investigational new drug applications and related meetings, including pre-IND meetings, "pre-NDA" stages, and pre-new drug application meetings, have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314.102 relating to submission of new drug marketing applications, as well as related meetings between sponsors or applicants and FDA or other communication with appropriate FDA officials to obtain advice and other information necessary to support submissions, and to discuss appropriate regulatory pathways, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 pertaining to the submission of biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 807, subpart E relating to the submission of a premarket notification ((510(k)) for a medical device have been approved under OMB control number 0910–0120. The collections of information in 21 CFR part 812 relating to the submission of Investigational Device Exemption applications have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 814 relating to the submission of a premarket approval application (PMA) have been approved under OMB control number 0910–0231.

III. Electronic Access

Persons with access to the internet may obtain the 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. 2026–19080 Filed 9–16–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at: samhsapra@samhsa.hhs.gov.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Survey on Drug Use and Health (OMB No. 0930–0110)

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older within the 50 states and the District of Columbia. Consistent with NSDUH designs since 1991, the 2027 NSDUH will include residents of noninstitutional group quarters (*e.g.*, shelters, rooming houses, dormitories) and civilians residing on military bases. Excluded from the NSDUH are people without fixed household address (*e.g.*, homeless people not in shelters) and residents of institutional group quarters, such as jails and hospitals.

The 2027 sampling frame will exclude U.S. territories. Although data collection pilots were conducted to assess operational feasibility in Puerto Rico (2023–2025) and in the U.S. Virgin Islands (2024), SAMHSA determined that additional testing and discussions with other statistical agencies are needed before expanding full-scale

NSDUH data collection to Puerto Rico and the U.S. Virgin Islands.

The 2027 NSDUH will continue to use both in-person and web-based modes of data collection. Consistent with all NSDUH surveys conducted since 2002, each respondent who completes the full interview will be given a \$30 incentive. The delivery method will depend on the interview mode: in-person respondents will receive a \$30 cash incentive, while web-based respondents will receive either an electronic gift card by email or a physical gift card by mail, based on their preference.

NSDUH provides nationally representative data on the use of tobacco, alcohol, and drugs; substance use disorders; mental health issues; recovery from substance use disorders and mental health issues; and receipt of substance use and mental health treatment at the national, state, and substate levels. NSDUH data also help to identify the extent of substance use and mental illness among different population subgroups, estimate trends over time, and determine the need for treatment services. Substance use topics covered include lifetime, past-year, and past-month use; age at first use; substance use treatment history; perceived need for treatment; and substance use disorders. Mental health topics include major depressive episodes; suicidal ideation and attempts; general mental illness; and use of mental health care. NSDUH estimates allow researchers, clinicians, policymakers, and the general public to better understand and improve the nation’s behavioral health.

The NSDUH questionnaire must be updated periodically to reflect changing substance use and mental health issues and to continue producing current data. For the 2027 NSDUH, planned changes from the 2026 questionnaire include: (1) revisions and additions to the Special Drugs module to prevent inconsistent reporting of last use of specific drugs with earlier modules; (2) revisions to the

Risk/Availability module to ask about using marijuana rather than smoking marijuana; (3) addition to the Mental Health Services Utilization module to capture past 12-month use of a Crisis Line service; (4) reinstatement of a question in the Youth Experiences module about perceived attitudes of close friends; (5) revisions to the Consumption of Alcohol module to ask about polysubstance use in the past 30 days rather than the last time the respondent used drugs; (6) additions to the Emerging Issues module to measure past 12-month use of glucagon-like peptide-1 medications (GLP-1s), selective serotonin reuptake inhibitors (SSRIs), serotonin and norepinephrine reuptake inhibitors (SNRIs), mood stabilizers, and antipsychotic medications; (7) reinstatement of questions in the Employment module about workplace testing for drug and alcohol use; and (8) revisions to the Health Insurance and Income modules to include updated state program names for Medicaid, the Children’s Health Insurance Program, and Temporary Assistance for Needy Families.

Overall, these changes are expected to generate data on new areas of interest, such as mental health medications and Crisis Line service utilization. They will also reinstate questions previously used by other federal agencies in their reporting and revise additional items to prevent misreporting.

The revisions to the Special Drugs module will allow the 2027 NSDUH to collect more consistent information across the survey and lower interview completion time by avoiding redundant questions for some respondents. Several questions in the Risk/Availability module were revised to ask about “using” marijuana rather than “smoking” marijuana. This wording change is intended to measure other ways of using marijuana that are common with youth, such as vaping or edibles. In the Mental Health Services Utilization module, the addition of a

question capturing past 12-month use of a Crisis Line service is to provide new data on emerging topics. Reinstating items in the Youth Experience and Employment module will collect data needed by several government agencies for their ongoing reporting while revising polysubstance use questions in the Consumption of Alcohol module to a standardized past 30-day reference period will bring this data more in line with other NSDUH drug use questions. The new questions measuring use of mental health medications, GLP-1s, and Crisis Line services were added because the NSDUH did not previously include these items and they are of growing interest to data users. Questions about workplace testing for drug and alcohol use were also reinstated in the Employment module to collect data needed by several government agencies for their ongoing reporting. Finally, annual updates of state Medicaid, Children’s Health Insurance Program, and Temporary Assistance to Needy Families program names were made to ensure question accuracy.

As with all NSDUH/NHSDA ¹ surveys conducted since 1999, the sample size of the NSDUH for 2027 will be sufficient to permit prevalence estimates for each of the 50 states and the District of Columbia. The total annual burden estimate for the NSDUH is shown below in Table 1. The primary set of new items is included in the Emerging Issues Module, which appears near the end of the interview. By this point, respondents are familiar with the survey format and questionnaire structure. The additional questions will take about one minute for an average respondent to complete, as they are short, contained within a module, and use straightforward survey logic. Overall, while new questions are being added, it is not expected that the addition will result in any significant increase in participant burden, as the survey branches efficiently to keep it short for most respondents.

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2027 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	297,529	1	297,529	0.083	24,695
Interview	67,507	1	67,507	1.008	68,047
Screening Verification	6,248	1	6,248	0.067	419
Interview Verification	7,088	1	7,088	0.067	475
Total	378,372		378,372		93,636

¹ Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse (NHSDA).

Send comments to SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 OR email him a copy at samhsapra@samhsa.hhs.gov. Written comments should be received by November 16, 2026.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2026–19079 Filed 9–16–26; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0054]

Agency Information Collection Activities; Revision; Exportation of Used Self-Propelled Vehicles

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 16, 2026) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0054 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals

seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) 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) 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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Exportation of Used Self-Propelled Vehicles.

OMB Number: 1651–0054.

Form Number: N/A.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Individuals and Businesses.

Abstract: U.S. Customs and Border Protection (CBP) regulations require an individual attempting to export a used self-propelled vehicle to furnish documentation to CBP at the port of export. Exportation of a vehicle is permitted only upon compliance with these requirements. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the Vehicle Identification Number (VIN), a Manufacturer's Statement of Origin, etc. CBP will accept originals or certified copies of the Certificate of Title. Supporting documentation may be submitted

through the Document Image System (DIS). The purpose of this information is to help ensure that stolen vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C.1627a, which provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles. It is also authorized by Title IV, Section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646(c), which requires all persons exporting a used self-propelled vehicle to provide to CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by 19 CFR Part 192. Further guidance regarding these requirements is provided at: <https://www.cbp.gov/trade/basic-import-export/export-docs/motor-vehicle>.

Type of Information Collection: Exportation of Self-Propelled Vehicles.

Estimated Number of Respondents: 1,400,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,400,000.

Estimated Time per Response: 5 minutes (0.0833333 hours).

Estimated Total Annual Burden Hours: 116,667.

Dated: September 15, 2026.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2026–19073 Filed 9–16–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2026–0694; OMB No. 1660–0076]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Mitigation Grant Program (HMGP) Application Reporting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of extension without revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this

opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments regarding the requirements, grants management procedures, and implementation of grants awarded under the Hazard Mitigation Grant Program (HMGP), which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities to reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster.

DATES: Comments must be submitted on or before November 16, 2026.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at www.regulations.gov under Docket ID FEMA-2026-0694. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: H-Camille Crain, Deputy Director, Documents, Design, Program Effectiveness Branch, at 202-212-4871 or H-Camille.Crain@fema.dhs.gov. You may contact the Information Management Division for copies of the proposed collection of information at email address: FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Stafford Act), Public Law 93-288, as amended, 88 Stat. 143 (42 U.S.C. 5170c), established the Hazard Mitigation Grant Program (HMGP). Program grant requirements and grants management procedures are outlined in 44 CFR part 206 subpart N, and 2 CFR parts 200 and 3002. FEMA administers the HMGP, and Recipients implement the grants under the HMGP per grant agreement, rules, and regulations. The HMGP is a disaster program that contributes funds toward the cost of hazard mitigation activities to reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster, or any area affected by a fire for which

assistance was provided under Section 420 of the Stafford Act (42 U.S.C. 5187). Section 102(4) of the Stafford Act (42 U.S.C. 5122(4)) defines a "State" as any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. "Recipient," as provided in 2 CFR 200.1, means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. "Subrecipient" refers to a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. 2 CFR 200.1. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. 2 CFR 200.1. The term "Indian Tribal government" is defined in section 102 of the Stafford Act, 42 U.S.C. 5122(6), as the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, 108 Stat. 4791 (25 U.S.C. 479a). In addition, the Sandy Recovery Improvement Act of 2013, Public Law 113-2, 127 Stat. 47 (42 U.S.C. 5170(b)) amended the Stafford Act to allow the Chief Executive of a Federally recognized Indian tribe to make a direct request for a major disaster or emergency declaration to the President of the United States.

The Department of Homeland Security adopted in its entirety the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 on December 26, 2014. 2 CFR 3002.1, 79 FR 75871 (Dec. 19, 2014). This rule eliminated overlapping and duplicative requirements for stakeholders, including states, territories and Indian Tribal governments, by using general terms such as "recipient" and "pass-through entity."

The HMGP regulation describes the application process in 44 CFR 206.436. Information collected through the financial award application is the minimum information necessary for the financial award administration under the HMGP and includes the project narrative, analysis of the measure's cost-effectiveness referred to as the benefit-cost determination, and environmental review used.

According to 44 CFR 206.436(d), "The State must submit all local HMGP applications and funding requests for

the purpose of identifying new projects to the Regional Administrator within 15 months of the date of disaster declaration."

Additionally, under 44 CFR 206.438(c), progress reports must be submitted by the HMGP recipient to the Regional Administrator on a quarterly basis, certifying how the funds are being used and reporting on the progress of activities funded under the subrecipient awards made to the Recipient by FEMA. The Regional Administrator and Recipient negotiate the date for submission of the first report. Quarterly progress reports describe the status of those projects on which a final payment of the Federal share has not been made to the recipient, and outline any problems or circumstances expected to result in noncompliance with the approved award conditions.

The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115-435, 132 Stat. 5534 (5 U.S.C. 311-315) establishes evaluation using systematic data collection and analysis of programs, policies, and organizations intended to assess their effectiveness and efficiency as an essential program activity.

Collection of Information

Title: Hazard Mitigation Grant Program (HMGP) Application and Reporting.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: OMB No. 1660-0076.

FEMA Forms: Project Narrative; Benefit-Cost Determination; Environmental Review; FEMA Form FF-206-FY-22-154 (formerly 009-0-111A), Quarterly Progress Reports.

Abstract: The Federal Emergency Management Agency (FEMA) administers the Hazard Mitigation Grant Program, which is a disaster program that contributes funds toward the cost of hazard mitigation activities to reduce the risk of future damage hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the form of grant awards and, through grantee quarterly reporting, monitor grantee project activities and expenditure of funds.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 296.

Estimated Number of Responses: 6,808.

Estimated Total Annual Burden Hours: 56,499.

Estimated Total Annual Respondent Cost: \$4,169,061.

Estimated Respondents' Operation and Maintenance Costs: \$0.

Estimated Respondents' Capital and Start-Up Costs: \$0.

Estimated Total Annual Cost to the Federal Government: \$5,684,662.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance 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, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Nigel Allicock,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2026-19036 Filed 9-16-26; 8:45 am]

BILLING CODE 9111-BW-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0121]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of

1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 19, 2026.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2014-0008. All submissions received must include the OMB Control Number 1615-0121 in the body of the letter, the agency name and Docket ID USCIS-2014-0008.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, John R. Pfirrmann-Powell, Acting Deputy Chief, telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on May 10, 2026, at 91 FR 25587, allowing for a 60-day public comment period. USCIS did receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2014-0008 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make

to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

(3) 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 Currently Approved Collection.

(2) *Title of the Form/Collection:* Generic Clearance of Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households; businesses and organizations. This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection 1615-0121 is 56,000 and the

estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 28,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$0. Respondents to this collection of information are not required to provide documentation or take other actions that might incur a cost.

Dated: September 9, 2026.

John R. Pfirrmann-Powell,

Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2026–19025 Filed 9–16–26; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0126]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Collection of Qualitative Feedback Through Focus Groups

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 19, 2026.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS–2012–0004. All submissions received must include the OMB Control Number 1615–0126 in the

body of the letter, the agency name and Docket ID USCIS–2012–0004.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, John R Pfirrmann-Powell, Acting Deputy Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on May 11, 2026, at 91 FR 25588, allowing for a 60-day public comment period. USCIS did not receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS–2012–0004 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

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

(3) 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 Currently Approved Collection.

(2) *Title of the Form/Collection:* Collection of Qualitative Feedback through Focus Groups.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Form; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; Business or other for-profit; Not-for-profit institutions. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, Department of Homeland Security/U.S. Citizenship and Immigration Services seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean 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 collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service,

or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for this information collection is 25,000 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 37,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$0. There is no cost to participate and there is no mailing cost as these are electronic submissions.

Dated: September 9, 2026.

John R. Pfirrmann-Powell,

Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2026-19026 Filed 9-16-26; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Docket No. USGS-2026-0298; GX26EN05ESB0500; OMB Control Number 1028-0096]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Regional Climate Adaptation Science Centers (CASCs)

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection authorization. Projects supported under this cooperative agreement should advance Administration priorities, including, but not limited to, American energy dominance, critical mineral development, water security,

infrastructure resilience, and natural hazard preparedness. Research and activities may incorporate scientific expertise in areas such as hydrology, geology, geospatial science, biosecurity, and near-earth space science, including extreme events such as drought, flooding, wildland fire, coastal erosion, severe storms, and geologic hazards, to develop actionable science, data, and tools that support informed decision-making by resource managers and stakeholders.

DATES: Interested persons are invited to submit comments on or before October 19, 2026.

ADDRESSES: You may submit comments by one of the following methods:

■ *Internet:* <https://www.regulations.gov>.

Search for and submit comments on Docket No. USGS-2026-0298.

■ *U.S. Mail:* USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Shawn Carter, Chief Administrator (Acting) and Senior Scientist of the USGS National Climate Adaptation Science Center, by email at scarter@usgs.gov, or by telephone at 571-314-2788. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 17, 2026 (91 FR 44868). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The US Geological Survey (USGS) manages one National and nine Regional Climate Adaptation Science Centers (CASCs). Each regional CASC involves a cooperative agreement with a host institution. The host institution agreements are periodically re-competed, requiring collection of information from potential host institutions. In addition, this information collection addresses annual and biannual reporting required of host institutions as part of their hosting agreement and associated research agreements.

Title of Collection: Department of the Interior Regional Climate Adaptation Science Centers.

OMB Control Number: 1028-0096.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Institutions that are expected to propose to serve as CASC host or partner institutions including state, local government, and tribal entities, and

academic institutions. Existing host institutions are state academic institutions.

Total Estimated Number of Annual Respondents: 10.

Total Estimated Number of Annual Responses: 307 Responses (see table below).

Estimated Completion Time per Response: Each proposal for CASC hosting is expected to take 200 hours to complete. The time required to complete annual reports for any specific host cooperative agreement is expected to take 5 hours per report and annual

reports for each research agreement are expected to total 2.5 hours per report.

Total Estimated Number of Annual Burden Hours: 2,590 Hours (see table below).

Type of report	Annual number of reports	Annual burden hours per report	Total annual burden
Host Recompete	9	200	1,800
Host Performance Report	9	5	45
Host Financial Report	9	5	45
Research Performance Report	135	2.5	337.5
Research Financial Report	135	2.5	337.5
NCASC Performance Report	5	2.5	12.5
NCASC Financial Report	5	2.5	12.5
Grand Total	307	220	2,590

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Information will be collected one time every five years for each CASC to enable re-competition of CASC hosting agreements. In addition, host institutions are required to provide annual financial reports and performance reports, as well as annual or biannual financial and performance reports on the associated research agreements.

Total Estimated Annual Non-hour Burden Cost: There are no "non-hour cost" burdens associated with this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Brian Kimbrell,

Information Collection Clearance Officer, U.S. Geological Survey.

[FR Doc. 2026-19048 Filed 9-16-26; 8:45 am]

BILLING CODE 4334-63-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1449]

Certain Balloon Dilation Devices, Systems, and Components Thereof; Notice of a Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and Remedy, the Public Interest, and Bonding; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review, in part, a final initial determination ("FID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also determined to extend the target date for completion of the above-captioned investigation to November 13, 2026.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2043. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On May 23, 2025, the Commission instituted this investigation based on a complaint filed by Entellus Medical, Inc. of Plymouth, Minnesota; Stryker Corporation of Portage, Michigan; and Stryker Sales, LLC of Portage, Michigan (collectively, "Complainants"). 90 FR 22,116-17 (May 23, 2025). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain balloon dilation devices, systems, and components thereof by reason of infringement of one or more of claims 1-11, 14, 15, and 19-30 of U.S. Patent No. 11,083,878 ("the '878 patent"); claims 1-16, 18-22, 24, 25, 27, 29, and 30 of U.S. Patent No. 11,090,472 ("the '472 patent"); and claims 1-4, 6-12, 15-20, and 22 of U.S. Patent No. 12,274,847 ("the '847 patent"). *Id.* The Commission's notice of investigation named the following respondents: Fiagon GmbH of Hennigsdorf, Germany; Fiagon AG Medical Technologies of Hennigsdorf, Germany; Fiagon NA Corporation of Austin, Texas; Fiagon NA, LLC of Austin, Texas; and Hemostasis, LLC of White Bear Lake, Minnesota (collectively, "Fiagon"). The Office of Unfair Import Investigations is

not participating in this investigation. *Id.*

On September 8, 2025, the ALJ held a *Markman* hearing on claim construction, and on December 8, 2025, the ALJ issued Order No. 15 construing certain claim terms. *See* Order No. 15 (Dec. 8, 2025).

On January 29, 2026, the Commission terminated the investigation as to claims 2–11, 15, 19, 21, and 24–30 of the '878 patent; claims 2–16, 18–22, 24, 25, 27, 29, and 30 of the '472 patent; and claims 2–4, 6–10, 12, 15–20, and 22 of the '847 patent. *See* Order No. 17 (Jan. 6, 2026), *unreviewed by* Comm'n Notice (Jan. 29, 2026).

The ALJ held an evidentiary hearing on January 14–16 and 20–21, 2026. As of the evidentiary hearing, the following claims remained in the investigation: claims 1, 14, 20, 22, and 23 of the '878 patent; claim 1 of the '472 patent; and claims 1 and 11 of the '847 patent (collectively, “the Asserted Claims”).

On June 26, 2026, the presiding ALJ issued the FID, finding a violation of section 337 in the importation into the United States, the sale for importation, and/or the sale in the United States after importation of certain balloon dilation devices, systems, and components thereof with respect to certain claims of the asserted patents. Specifically, the FID finds that: (1) Complainants have satisfied the importation requirement for the accused products; (2) Complainants have shown infringement as to claims 1, 14, 20, 22, and 23 of the '878 patent, claim 1 of the '472 patent, and claims 1 and 11 of the '847 patent; (3) Fiagon has not shown invalidity as to claims 1, 14, 20, 22, and 23 of the '878 patent, claim 1 of the '472 patent, or claims 1 and 11 of the '847 patent; (4) Fiagon has not shown that the '878, '472 are unenforceable; and (5) Complainants have satisfied the technical and economic prongs of the domestic industry requirement for the '878, '472, and '847 patents.

The FID also includes a Recommended Determination on Remedy and Bonding (“RD”). *Id.* at 168–74. The RD recommends that the Commission issue a limited exclusion order and cease and desist orders against all respondents in the event the Commission finds a violation of section 337. *Id.* at 168–72. The RD also recommends that the Commission impose a of 61% for certain accused products, but no bond for other accused products during the period of Presidential Review. *Id.* at 174.

On July 27, 2026, Complainants submitted a public interest statement pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). On

the same day, Fiagon also submitted a public interest statement pursuant to Commission Rule 210.50(a)(4). On July 28, 2026, Congressman Bill Huizenga from Michigan submitted a letter responding to the Commission's July 2, 2026 notice in the **Federal Register**. *See* 91 FR 40,588–89 (July 2, 2026). In addition, on July 29 and 30, 2026, Fiagon submitted separate letters from six doctors related to the public interest.

On July 10, 2026, Fiagon filed a petition for review of several of the FID's findings concerning claim construction, whether the accused articles are “articles that infringe,” induced infringement, validity under the written description requirement, and obviousness. On July 17, 2026, Complainants filed a response to Fiagon's petition.

Having reviewed the record of the investigation, including the parties' petitions for review and related submissions, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review the FID's findings that: (1) Complainants have satisfied the importation requirement for the accused products; (2) Complainants have established induced infringement of the Asserted Claims; (3) Fiagon failed to establish by clear and convincing evidence that any asserted claim is invalid for lack of written description under 35 U.S.C. 112; (4) Fiagon failed to establish by clear and convincing evidence that any asserted claim is invalid as obvious under 35 U.S.C. 103; and (5) Complainants have satisfied the economic prong of the domestic industry requirement for the '878, '472, and '847 patents.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC

Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994). In connection with these findings, the Commission requests responses from the parties to the following questions:

(1) Please explain whether and how the FID finds a violation of Section 337 based on Fiagon's own direct infringement of any Asserted Claim. Please discuss whether, including under the framework articulated by Commissioner Kearns in his Additional Views in Certain High-Density Fiber Optic Equipment and Components Thereof, Inv. No. 337–TA–1194, the imported components (namely those combined with U.S.-sourced components and assembled into complete VenSure devices/systems at Fiagon's site in Minnesota) should be considered articles that directly infringe the asserted claims of the '878 and '472 patents and therefore are “articles that infringe” under section 337. *See* FID at 17–18; Certain High-Density Fiber Optic Equipment and Components Thereof, Inv. No. 337–TA–1194, Comm'n Op. at 98–104, Additional Views of Chair Kearns Regarding “Articles that Infringe” (Aug. 23, 2021).

(2) Complainants argued before the ALJ that Fiagon takes actions to instruct or encourage physicians and healthcare facilities to use the Accused Products in a manner that constitutes direct infringement. The FID finds that the complaint, with its allegations of direct, induced, and contributory infringement, put Fiagon on notice of its infringement. Please identify evidence in the record showing that Fiagon took such actions after receipt of the complaint in this investigation.

The parties are invited to brief only the discrete issues requested above, with reference to the applicable law and limited to arguments and evidence in the existing evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. To the extent that any party in this investigation asserts that the proposed remedy would adversely impact the public interest, please identify and describe specific evidence supporting this assertion and where in

the record such evidence was first submitted to the ALJ. If such evidence was not submitted to the ALJ, please explain why the Commission should give such evidence any weight at this stage in the investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the RD by the ALJ on remedy and bonding.

In its initial submission, Complainants are also requested to identify the remedy sought, and Complainants are requested to submit proposed drafts of remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS subheadings under which the accused products are imported and to supply the identification information for all known importers of the products at issue in this investigation. All initial written submissions, from the parties and/or third parties/interested government agencies, and proposed remedial orders from the parties must be filed no later than close of business on September 28, 2026. All reply submissions must be filed no later than the close of business on October 5, 2026. Opening submissions from the parties are limited to 50 pages. Reply submissions from the parties are limited to 25 pages. All submission from third parties and/or interested government agencies are limited to 10 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to

the investigation number ("Inv. No. 337-TA-1449") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 with the Commission and served on any parties to the investigation within two business days of any confidential filing. 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.

The target date for completion of the investigation is extended to November 13, 2026. The Commission's vote on this determination took place on September 14, 2026. The authority for the Commission's determination is contained in 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: September 14, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-19045 Filed 9-16-26; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2026-08; Application No. D-12097]

Exemption Involving the Abiomed Retirement Savings Plan Located in Danvers, MA

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This exemption allows the Abiomed Retirement Savings Plan (the Plan) to acquire and hold certain "contingent value rights" and to receive payments in connection with that acquisition and holding. 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:* The exemption will be in effect as of November 15, 2022.

FOR FURTHER INFORMATION CONTACT:

Blessed ChukSORJI-Keefe at ChukSORJI.Blessed@dol.gov or Emily Harris at Harris.Emily.M@dol.gov.

SUPPLEMENTARY INFORMATION:

Background

The Plan submitted an exemption application to the Department of Labor (the Department) requesting retroactive exemptive relief, in effect as of November 15, 2022, for: (1) the Plan's acquisition and holding of "contingent value rights" (CVRs) following the tender of Abiomed, Inc. (Abiomed) common stock or the cancellation of Abiomed common stock; and (2) the Plan's receipt of payments in connection with the acquisition and holding of CVRs (collectively, the Covered Transactions).¹ The Plan's acquisition of CVRs was on essentially

¹ 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, contained as an exhibit to the Agreement and Plan of Merger, dated as of November 15, 2022, between Abiomed and Johnson & Johnson.

the same terms and in the same manner as the acquisition of CVRs by all other similarly situated shareholders of Abiomed common stock.

After reviewing the Plan's application, the Department tentatively determined that the Covered Transactions would be administratively feasible, in the interest of, and protective of, the Plan and its participants and beneficiaries. On June 3, 2026, the Department published a notice of proposed exemption that would permit the Covered Transactions subject to certain conditions (the Proposed Exemption).² The Proposed Exemption invited interested persons to submit comments and hearing requests to the Department.

Written Comment

The Department received one comment from Johnson & Johnson (J&J) on behalf of itself, Abiomed, and the Plan.³ J&J requested that the Department revise the audit condition in Proposed Exemption Section II(j) which requires that, if J&J or Abiomed provides notice or takes the position that a CVR milestone has not been met, J&J must submit to an audit by an independent certified public accounting firm for the purpose of verifying whether the relevant CVR milestone has been met, and J&J must bear the cost of the audit.

J&J states in its comment that, due to the structure of the CVR milestones, payments are not contingent on all CVR milestones being met. Instead, the achievement of individual CVR milestones would trigger specific payments. J&J also represents that the audit condition, as proposed, would be inconsistent with the terms of the Contingent Value Rights Agreement governing the CVRs (CVR Agreement), in that the CVR Agreement does not require that audits automatically occur. J&J explains that the CVR Agreement permits holders of at least 35% of the CVRs to obtain an audit upon request if J&J provides notice that a CVR milestone relating to net sales figures has not been met. Only if the auditor were to determine that J&J's calculations of the net sales figures are incorrect, J&J would be required to pay for the costs of the audit. J&J presented that this framework

for the CVR Agreement reflects market practice.

Additionally, J&J explains that in any event, the CVR Agreement does not provide for an audit in connection with two of the CVR milestones. These CVR milestones would be publicly reported by organizations independent of J&J if they are achieved. For these two CVR milestones there would be no records to audit and the application of Section II(j) would be unworkable.⁴

Department's Response

After reviewing J&J's comment, the Department has determined to revise Section II(j) so that the ability to request an audit is consistent with the terms of the CVR Agreement. In this regard, holders of at least 35% of the CVRs may obtain an audit upon request if J&J provides notice that a CVR milestone relating to net sales figures has not been met. First, the Department agrees that an automatic audit requirement is unnecessary for the CVR milestones that are determined by publicly reviewable actions of independent third parties. Second, the Department agrees that the audit rights already provided under the CVR Agreement are a sufficient, independent means to validate J&J's calculations in the event J&J provides notice that a CVR milestone was not reached.⁵

The Department notes that, notwithstanding the above, Section II(j) provides that J&J will cover any audit costs that would otherwise be allocable to the Plan. This ensures the Plan is not required to bear costs arising from an audit process that is controlled by CVR holders generally and not by the Plan alone. The Plan should not bear these expenses, because the Plan acquired the CVRs through an independent corporate transaction, did not negotiate the CVR Agreement, and does not independently control whether the 35% holder threshold for requesting an audit is met. The condition preserves the Plan's economic position by ensuring that participant accounts are not reduced by audit expenses.

⁴ These two milestones include the: (1) U.S. Food and Drug Administration premarket application approval of the use of certain Abiomed products in patients by January 1, 2028; and (2) First publication of a Class I recommendation for the use of certain Abiomed products for patients in American College of Cardiology/American Heart Association clinical practice guidelines no later than December 31, 2029.

⁵ The Department notes that the exemption requires Plan participants to have the same rights with respect to the CVRs allocated to their accounts under the Plan as unrelated CVR holders have. Thus, Plan participant CVR holders and unrelated CVR holders will be equally affected by J&J's determinations whether a net revenue milestone has been met.

Based on the record and representations made by the Plan, the Department makes the requisite findings under ERISA section 408(a) that the exemption is: (1) administratively feasible for the Department; (2) in the interest of the Plan and its participants and beneficiaries; and (3) protective of the rights of the participants and beneficiaries of the Plan. All of the exemption's conditions must be met at all times.⁶ Accordingly, affected parties should be aware that the exemption's conditions are, taken individually and as a whole, necessary for the Department to grant relief. The exemption provides only the relief specified herein and does not provide relief from violations of any law, including but not limited to, ERISA section 404, other than the prohibited transaction provisions of ERISA and the Code.

The complete application file (D-12097) will remain available for public inspection in the Public Disclosure room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, reachable by telephone at 866-444-3272. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the Proposed Exemption.

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) As required by ERISA section 408(a) and Code section 4975(c)(2), the Department finds that the exemption is

⁶ Any references hereinafter to sections of ERISA shall be deemed to refer to the corresponding sections of the Code, unless indicated otherwise.

² 91 FR 33205 (June 3, 2026).

³ In addition to the comment's substantive request, J&J also clarified that the Plan's Abiomed stock fund was unitized, and as a result, the \$29,040,462.55 fair market value of the stock fund included both shares with a value of \$27,621,947.20 and a \$1,418,515.35 cash position. Further, J&J clarified that (a) its name is Johnson & Johnson, not Johnson & Johnson, Inc. and (b) the name of the Plan's committee is the Abiomed 401(k) Fiduciary Committee.

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 exemption is 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 availability of this exemption is 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.

Accordingly, after considering the entire record developed in connection with the exemption application, the Department grants the following exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the Department's exemption procedures regulation.⁷

Section I. Covered Transactions

If the conditions in Section II are met, 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)⁸ following the tender of Abiomed common stock or the cancellation of Abiomed common stock; and (2) the Plan's receipt of payments in connection with the transactions described in (1).

Section II. Conditions

(a) The Plan's acquisition of the CVRs resulted solely from an independent corporate act of Johnson & Johnson (J&J), without participation on the part of any Plan fiduciary, in accordance with the terms of the Agreement and Plan of

Merger⁹ 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) Abiomed 401(k) Fiduciary Committee (Committee) acted prudently and loyally in accordance with ERISA section 404, with respect to the transactions described in this 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) The Contingent Value Rights Agreement governing the CVRs (CVR Agreement) permits holders of at least 35% of the CVRs to obtain an audit upon request if J&J provides notice that a CVR Milestone relating to net sales figures has not been met. To the extent an audit is performed in accordance with the terms of the CVR Agreement, then J&J will bear any audit-related costs and expenses that would otherwise have been allocated to the Plan regardless of the determinations of the auditor. 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 (k) 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: The exemption will be in effect as of November 15, 2022.

⁷ 29 CFR part 2570, subpart B (89 FR 4662 (Jan. 24, 2024)). 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 to the Secretary of Labor. Therefore, this exemption is issued solely by the Department.

⁸ 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.

⁹ 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.

Signed at Washington, DC, this 17th day of August 2026.

Christopher Motta,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2026-19077 Filed 9-16-26; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Document Number: 26-051; NASA Docket Number: NASA-2026-0430]

Name of Information Collection: Generic Clearance for Improving Customer Experience (OMB Circular A-11, Section 280 Implementation)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of extension of an 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 November 16, 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-2026-0430].

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the submissions may be obtained from NASA PRA Clearance Officer, Stayce Hoult by emailing hq-ocio-pra-program@mail.nasa.gov, calling (256) 714-8575, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the PRA, (44 U.S.C. 3501-3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, NASA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A-11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.*, in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. NASA will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data

and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

II. Methods of Collection

NASA will collect this information by electronic means, when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews.

III. Data

Title: Generic Clearance for Improving Customer Experience (OMB Circular A-11, Section 280 Implementation).

OMB Number: 2700-0181.

Type of Review: Notice of extension of an information collection.

Affected Public: Collections will be 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. For the purposes of this request, "customers" are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 2,001,550.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

Estimated Total Annual Burden Hours: 101,125.

Estimated Total Annual Cost to Public: \$0.

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 Harris Hault,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2026-19049 Filed 9-16-26; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-26-0430; NARA-2026-040]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by November 2, 2026.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-26-0430/document>.

This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via *regulations.gov*, you may email us at request.schedule@nara.gov for instructions on submitting your

comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

Richard Green, Records Management Operations, by email at richard.green@nara.gov or at 301-395-7825. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-395-7825.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The

schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a "Consolidated Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of State, Records of the Office of Inspector General (OIG) (DAA–0059–2026–0001).
2. Administrative Office of the United States Courts, Drug Testing Chain of Custody Forms (DAA–0021–2026–0001).
3. Bureau of Prisons, Special Housing Unit (SHU) Program Records (DAA–0129–2025–0018).
4. Defense Contract Management Agency, Military Human Resources Administration (DAA–0558–2026–0002).
5. Federal Energy Regulatory Commission, 549C—Standards for Business Practices of Interstate Natural Gas Pipelines (DAA–0138–2026–0004).
6. Federal Retirement Thrift Investment Board, Office of the Chief Financial Officer (DAA–0474–2025–0002).
7. National Aeronautics and Space Administration, Legislative Records (DAA–0255–2026–0002).
8. National Indian Gaming Commission, Records pertaining to the Office of General Counsel (OGC) (DAA–0600–2026–0002).
9. Rural Development, Rural Business Cooperative Services Records (DAA–0572–2026–0001).

William P. Fischer,*Acting Chief Records Officer for the U.S. Government.*

[FR Doc. 2026–19063 Filed 9–16–26; 8:45 am]

BILLING CODE 7515–01–P**OFFICE OF PERSONNEL
MANAGEMENT****Agency Information Collection
Request: Annual Employee Survey
(3206–NEW)****AGENCY:** Office of Personnel Management.**ACTION:** 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) invites the public and Federal agencies to comment on its new Annual Employee Survey (AES) information collection request (ICR). The AES includes survey items previously administered through the Federal Employee Viewpoint Survey (FEVS) and fulfills statutory and regulatory employee-survey requirements.

DATES: Comments are encouraged and will be accepted until October 19, 2026. This process is conducted in accordance with 5 CFR 1320.8(d)(1).

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

FOR FURTHER INFORMATION CONTACT: Employee Viewpoint Survey Team, Attention: Makisha Brown, via electronic mail to EVS@opm.gov or via telephone at (202) 606–1800.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

Section 1128 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, 5 U.S.C. 7101 note) requires executive agencies to conduct an annual employee survey and directs OPM to issue regulations prescribing the survey questions that must appear on all agency surveys to allow for comparison across agencies. The survey is the instrument through which agencies meet the statutory requirement to assess (1) leadership and management practices that contribute to agency performance and (2) employee satisfaction with leadership policies and practices, the work environment, rewards and recognition for professional accomplishment and personal contributions to achieving the organizational mission, opportunity for professional development and growth,

and opportunity to contribute to achieving the organizational mission. OPM implemented this requirement through regulations at 5 CFR part 250, subpart C, to provide comparable governmentwide data and centrally administered the annual survey, the Annual Employee Survey (formerly Federal Employee Viewpoint Survey (FEVS)), on behalf of agencies. Agencies participating in the AES satisfy the annual employee survey requirement by including the prescribed core survey questions, while retaining limited flexibility to add agency-specific items consistent with OPM guidance.

In a proposed rule (91 FR 40435) issued July 2, 2026, OPM proposed to reduce the number of prescribed annual employee survey questions from 16 to 10, retaining the most probative items to better serve workforce planning needs. In addition, OPM would no longer centrally administer the survey on behalf of agencies. Instead, each agency would administer the survey to its employees. The survey consists of Likert-type, mark-one, and mark-all-that-apply items. The information collection consists of the responses provided by the employees who complete the survey. The OPM survey will be available to agencies as a common form. An agency would submit the resulting data for the prescribed questions to OPM and OMB once per year to enable governmentwide comparison. Should agencies add questions to the common form, agencies would be responsible for their own collections separate from the OPM common form and would need to seek their own OMB control number.

Analysis

Agency: Office of Personnel Management.

Title: Annual Employee Survey (AES).

OMB Number: 3206–NEW.

Frequency: Annually.

Affected Public: Federal Government.

Number of Respondents: 1,990.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 166 hours.

Alexys Stanley,

Federal Register Liaison.

[FR Doc. 2026–19042 Filed 9–16–26; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–383 and K2026–373; MC2026–384 and K2026–374; MC2026–385 and K2026–375; MC2026–386 and K2026–376]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

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

DATES: *Comments are due:* September 22, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

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

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title

of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s):* MC2026–384 and K2026–374; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 1093 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 14, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* September 22, 2026.

2. *Docket No(s):* MC2026–386 and K2026–376; *Filing Title:* USPS Request to Add Priority Mail Contract 957 to the Competitive Product List and Notice of

Filing Materials Under Seal; *Filing Acceptance Date:* September 14, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* September 22, 2026.

III. Summary Proceeding(s)

1. *Docket No(s):* MC2026–383 and K2026–373; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1092, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 14, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s):* MC2026–385 and K2026–375; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1094, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 14, 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. 2026–19070 Filed 9–16–26; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024–262; CP2023–108; CP2024–5; MC2026–382 and K2026–372]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

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

DATES: *Comments are due:* September 21, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction

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).

II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

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

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are

negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s)*: CP2024–262; *Filing Title*: USPS Request Concerning Amendment Three to Priority Mail Express, Priority Mail, USPS Ground Advantage & Parcel Select Contract 5, with Materials Filed Under Seal; *Filing Acceptance Date*: September 11, 2026; *Filing Authority*: 39 CFR. 3035.105 and 39 CFR 3041.505; *Public Representative*: Christopher Mohr; *Comments Due*: September 21, 2026.

2. *Docket No(s)*: CP2023–108; *Filing Title*: USPS Request Concerning Amendment One to Parcel Return Service Contract 19, with Materials Filed Under Seal; *Filing Acceptance Date*: September 11, 2026; *Filing Authority*: 39 CFR. 3035.105 and 39 CFR 3041.505; *Public Representative*: Christopher Mohr; *Comments Due*: September 21, 2026.

3. *Docket No(s)*: CP2024–5; *Filing Title*: USPS Request Concerning Amendment One to Parcel Return Service Contract 20, with Materials Filed Under Seal; *Filing Acceptance Date*: September 11, 2026; *Filing Authority*: 39 CFR. 3035.105 and 39 CFR 3041.505; *Public Representative*: Jennaca Upperman; *Comments Due*: September 21, 2026.

4. *Docket No(s)*: MC2026–382 and K2026–372; *Filing Title*: USPS Request to Add Priority Mail Express International & First-Class Package International Service Contract 124 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 11, 2026; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: September 21, 2026.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,
Legal Assistant.

[FR Doc. 2026–19018 Filed 9–16–26; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding 4 Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of information collection*: Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079.

Under Section 4 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 354), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain the claimant's statement when the claimant, the claimant's employer, or another source indicates that the claimant has voluntarily left work.

Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent.

Previous Requests for Comments: The RRB has already published the initial

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).

60-day notice (91 FR 44882 on July 17, 2026) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Certification Regarding Rights to Unemployment Benefits.

OMB Control Number: 3220–0079.

Form(s) submitted: UI–45.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: In administering the disqualification for the voluntary leaving of work provision of Section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates the claimant left

voluntarily. The certification obtains information needed to determine if the leaving was for good cause.

Changes proposed: The RRB proposes the following changes to Form UI–45:

- In Paperwork Reduction Act/Privacy Act Notices, changed last sentence to “If you wish, send comments regarding the accuracy of our estimate, or any other aspect of this form, including suggestions for reducing completion time, to: Railroad Retirement Board, ATTN: Bureau of Information Services/Policy & Compliance, 844 N. Rush Street., Chicago, IL 60611–1275.”

- Below Paperwork Reduction Act/Privacy Act Notices, changed to “Print all answers in ink.”

- In Section 1.C., added new sentence “Include attempts you made to address issues or grievances with the employer prior to leaving.”

- In Section 3.A., changed to “Have you applied for and/or claimed any state unemployment benefits of unemployment benefits under any law other than the Railroad Unemployment Insurance Act? If “Yes,” show the name, address, and telephone number of the office/agency where you applied. If “No,” go to section 4.”

- In Section 3.B, changed to “Have you been denied any such benefits? If “Yes,” attach a copy of the notice or decision from the unemployment office at which you applied.”

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–45	176	15	44
Total	176		44

2. Title and Purpose of information collection: Self-Employment and Substantial Service Questionnaire; OMB 3220–0138.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. However, applicants are not required to stop nonrailroad work or self-employment.

The RRB considers some work claimed as “self-employment” to actually be employment for an employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances of each case. These circumstances are prescribed in 20 CFR 216.

Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a “Last Pre-Retirement Nonrailroad Employer” (LPE). However, Section 2(f)(6) of the RRA requires that a portion of the employee’s Tier II benefit and supplemental annuity be deducted for earnings from the “LPE.”

The “LPE” is defined as the last person, company, or institution with whom the employee or spouse applicant was employed concurrently with, or after, the applicant’s last railroad employment and before their annuity beginning date. If a spouse never

worked for a railroad, the LPE is the last person for whom he or she worked.

The RRB utilizes Form AA–4, *Self-Employment and Substantial Service Questionnaire*, to obtain information needed to determine if the work the applicant claims is self-employment is really self-employment or work for an LPE or railroad service. If the work is self-employment, the questionnaire identifies any month in which the applicant did not perform substantial service.

Completion is voluntary. However, failure to complete the form could result in the nonpayment of benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (91 FR 44882 on July 17, 2026) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Self-Employment and Substantial Service Questionnaire.

OMB Control Number: 3220–0138.

Form(s) submitted: AA–4.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. Work for a Last Pre-Retirement Nonrailroad Employer (LPE), and work in self-employment affect payment in different

ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

Changes proposed: The RRB proposes the following changes to the AA–4:

- On Page 1, changed grey section at the top of the page to “DO NOT WRITE IN THIS SPACE—RRB Official Use Only”.

- On Page 1, Paperwork Reduction Act/Privacy Act Notices, (1) changed 2nd sentence to “This information is needed to determine whether your self-employment or business activity (which includes all forms of work or investment regardless of profit or passive income) will affect your railroad retirement benefits under the RRA.”, (2) added new 4th sentence “If there are self-employment, business or any other type of earnings reported to the RRB that are miscategorized or incorrectly associated to you, then please inform an RRB representative so that you are given instructions on how to correct your earnings record.”, and (3) changed last sentence to “Railroad Retirement Board, ATTN: Bureau of Information Services/Policy & Compliance, 844 N. Rush Street, Chicago, IL 60611–1275.”

- In Section 1, changed year for example date to “June 6, 2026.”

- In Section 2, removed instructions below item 4.

- In Section 2, removed instructions below item 5.

- In Section 3, changed section title to “Information About Your Self-

Employment Or Business Activity” and item 7a to “Enter the name and address of your business or business activity.”

- In Section 3, item 7b, added “Gig Work (ex. ride-share) and “Limited Liability Company (LLC)” business or business activity options.
- In Section 3, added item 7c “Enter the name of the government Agency where your business or business activity is registered/incorporated.”
- In Section 3, item 8a, added “Director/Board Member”, “Farmer” and “Landlord” to job title options.
- In Section 3, item 8c, added “phone number(s)” for persons or organizations for whom you perform service.

- In Section 3, item 12, changed to “Do you advertise your services?”
- In Section 4, inserted “*did not*” in first sentence between “you” and “perform”.
- In Section 5, item 23, added “Note: If you need to report your earnings for any additional year(s), then provide the information in Section 6.”
- In Section 5, item 27a, inserted “agreement” between “written” and “in accordance”.
- In Section 5, item 28, changed to “Do you risk personal financial loss in your business or business activity?”
- In Section 7, item 31, changed certification to “I certify that all the

information I gave the Railroad Retirement Board (RRB) on this form is true to the best of my knowledge. I know that if I have made a false or fraudulent statement on this form or withhold information in order to receive benefits from the RRB, I am committing a crime which is punishable under Federal law by fine or imprisonment or both.”

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA-4 (With assistance)	968	40	645
AA-4 (Without assistance)	51	70	60
Total	1,019		705

3. Title and purpose of information collection: Vocational Report; OMB 3220-0141.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicant’s “regular occupation” or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G-251, *Vocational Report*, to obtain an applicant’s work history. This information is used by the RRB to determine the effect of a disability on an applicant’s ability to work. Form G-251 is designed for use with the RRB’s disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)’s disability annuity who indicate that they have been employed at some time. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (91 FR 44883 on July 17, 2026) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Vocational Report.

OMB Control Number: 3220-0141.

Form(s) submitted: G-251.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Section 2 of the Railroad Retirement Act provides for the payment of disability annuities to qualified employees and widow(ers). In order to determine the effect of a disability on an annuitant’s ability to work, the RRB needs the applicant’s work history. The collection obtains the information needed to determine their ability to work.

Changes proposed: The RRB proposes the following changes to Form G-251:

- In Section 3, item 7, added “including any self-employment” at the end of the first sentence, added “NOTE 3: If you are listing any self-employment or work for a business that you own, then also complete form AA-4, Self-Employment and Substantial Service Questionnaire.” and added “Name of Employer” column.
- In Section 3, items 12, 16 and 20, added “the interactions you have with coworkers or the public” and “vision requirements” to the list of essential duties that may be described of the position or occupation named in Item’s 7a, 7b and 7c and made other minor editorial changes to make questions simpler and clearer.

- In Section 3, items 14b, 18b and 22b, replaced “Descriptive Comments” with “Description of Physical Activity” in the 2nd sentence and added “Description of Physical Activity” column.

- In Section 3, items 14b, 18b and 22b, added “³Constantly ($\frac{2}{3}$ to $\frac{3}{4}$)” in the Amount of Time column.

- In Section 3, items 14b(4), 18b(4) and 22b(4), replaced “Crouching/Squatting/Stooping” with “Crouching/Squatting”.

- In Section 3, items 14b(5), 18b(5) and 22b(6), added “Stooping” and renumbered subsequent physical activity action options.

- In Section 3, added “³Constantly means occurring over two-thirds (approx. 5 hours) of an 8-hour workday; cumulative, not continuous.” for footnotes related to the Amount of Time column for items 14b, 18b and 22b.

- In Paperwork Reduction Act/ Privacy Act Notices, changed last sentence to “If you wish, send comments regarding the accuracy of our estimate, or any other aspect of this form, including suggestions for reducing completion time, to: Railroad Retirement Board, ATTN: Bureau of Information Services/Policy & Compliance, 844 N. Rush Street., Chicago, IL 60611-1275.”

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G-251 (with assistance)	2,561	40	1,707
G-251 (without assistance)	117	50	98

Form No.	Annual responses	Time (minutes)	Burden (hours)
Total	2,678		1,805

4. Title and Purpose of information collection: Designation of Contact Officials; 3220–0200.

Coordination between railroad employers and the RRB is essential to properly administer the payment of benefits under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In order to enhance timely coordination activity, the RRB utilizes Form G–117A, Designation of Contact Officials. Form G–117A is used by railroad employers to designate employees who are to act as point of contact with the RRB on a variety of RRA and RUIA-related matters.

Form G–117a (internet), Designation of Contact Officials, is available to employers who request access to the form through the RRB's Employer Reporting System (ERS). The G–117a (internet) consists of a series of screens that allows users to view the Contact Officials currently on file for the employer. Users will be able to edit and delete existing Contact Officials, as well as add new Contact Officials. The screen to edit and add Contact Officials collects essentially the same information as the approved paper Form G–117a. The internet version provides for the required notices and certifications, contains help messages to ensure users provide valid contact information, and prevents users from deleting Contact Officials without first providing a replacement.

Completion is voluntary. One response is requested from each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (91 FR 44884 on July 17, 2026) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Designation of Contact Officials.

OMB Control Number: 3220–0200.

Form(s) submitted: G–117A & G–117A (internet).

Type of request: Revision of a currently approved collection.

Affected public: Private Sector; Businesses or other for profits.

Abstract: The Railroad Retirement Board (RRB) requests that railroad employers designate employees to act as liaison with the RRB on a variety of Railroad Retirement Act and Railroad Unemployment Insurance Act matters.

Changes proposed: The RRB proposes the following changes to Forms G–117a (Paper) and G–117a (internet):

Form G–117a (Paper):

- Changed the layout of the form to accommodate remove the “Items/Contact Official and/or Descriptions” section in the form instructions and move each Contact Official section of the form as applicable.

- Added “(4) SUPPLEMENTAL ANNUITY” Designation of Contact Official.

- Added item “(7) SECTION 2(f) BILL PAYMENT—RUIA” Designation of Contact Official.

- Added “(9) SECTION 12(o) BILL PAYMENT—RUIA” Designation of Contact Official.

- Removed “(11) STREET ADDRESS”.

- Added “(14) VERIFICATION OF EMPLOYER GROUP HEALTH PLAN” Designation of Contact Official.

- Added “(15) CERTIFICATION”.

- Renumbered items to account added Contact Officials, as applicable.

- In Paperwork Reduction Act/Privacy Act Notices, changed last sentence to “If you wish, send comments regarding the accuracy of our estimate, or any other aspect of this form, including suggestions for reducing completion time, to: Railroad Retirement Board, ATTN: Bureau of Information Services/Policy & Compliance, 844 N. Rush Street., Chicago, IL 60611–1275.”

Form G–117a (internet):

- Updated the Manage Contact Officials screen to added new contact official types to match Form G–117 (Paper).

- Updated the New Contact Official and Edit Contact Official screens to add new contact official types in the Areas of Responsibility section to match Form G–117 (Paper).

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–117A	20	15	5
G–117a (Internet)	75	5	6
Total	95		11

Additional Information or Comments: Copies of the forms and supporting documents or comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to Brian.Foster@rrb.gov.

Written comments 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.

Brian Foster,
Clearance Officer.

[FR Doc. 2026–19022 Filed 9–16–26; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106346; File No. SR–NYSEARCA–2026–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

September 14, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that on September 1, 2026, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 NYSE Arca Equities Fees and Charges (“Fee Schedule”) with respect to Retail Tiers. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule with respect to Retail Tiers. More specifically, the Exchange proposes to (1) reinsert a previously

removed modifier for certain Retail Orders ⁴ that are executed against other Retail Orders and (2) exclude Mid-Point Liquidity (“MPL”) Orders ⁵ and Discretionary Pegged Orders (“DPO” orders) ⁶ submitted with a retail modifier from the fee applicable to Retail Orders with a time-in-force of Day that remove liquidity.

The proposed change responds to the current competitive environment where ETP Holders have a choice among both exchange and off-exchange venues of where to route marketable retail order flow.

The Exchange proposes to implement the fee changes effective September 1, 2026.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” ⁷

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for

order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.” ⁸ Indeed, equity trading is currently dispersed across 18 exchanges, ⁹ numerous alternative trading systems, ¹⁰ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share. ¹¹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 15% market share of executed volume of equities trading. ¹²

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. The competition for Retail Orders is even more stark, particularly as it relates to exchange versus off-exchange venues.

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 17 other exchange venues for that Retail Order flow that is not directed off-exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

To respond to this competitive environment, the Exchange has established a number of Retail Tiers, e.g., Retail Tier 1, Retail Tier 2, Retail

⁴ A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEARCA–2012–77).

⁵ An MPL Order is a limit order that is not displayed and does not route, with a working price at the midpoint of the Protected Best Bid/Offer. See NYSE Arca Rule 7.31–E(d)(3).

⁶ A DPO order is a Pegged Order to buy (sell) that upon entry is assigned a working price equal to the lower (higher) of the midpoint of the PBBO (“Midpoint Price”) or the limit price of the order. Any untraded shares of such order are assigned a working price equal to the lower (higher) of PBB (PBO) or the order’s limit price and is automatically adjusted in response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order’s limit price. In order to trade with contra-side orders on the NYSE Arca Book, a DPO order to buy (sell) will exercise the least amount of price discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the DPO order’s limit price). See NYSE Arca Rule 7.31–E(h)(3).

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (“Regulation NMS”).

⁸ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

⁹ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

¹⁰ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlslist.htm>.

¹¹ See Cboe U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹² See *id.*

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Tier 3, Retail Tier 4, Retail Tier 5 and Retail Tier 6, which are designed to provide an incentive for ETP Holders to route Retail Orders to the Exchange by providing higher credits for adding liquidity correlated to an ETP Holder's higher trading volume in Retail Orders on the Exchange. Under certain of these tiers, ETP Holders also do not pay a fee when such Retail Orders have a time-in-force of Day that remove liquidity from the Exchange up to a certain volume threshold. The Retail Tiers are designed to encourage ETP Holders that provide displayed liquidity in Retail Orders on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed Retail Order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange. Under certain of these six tiers, ETP Holders also do not pay a fee when such Retail Orders have a time-in-force of Day that remove liquidity from the Exchange.

Proposed Rule Change

Currently, pursuant to footnote (d) under the Retail Tiers pricing table, ETP Holders that qualify for Retail Tier 1, Retail Tier 2, Retail Tier 3, Retail Tier 5 and Retail Tier 6 are not charged a fee or provided a credit for Retail Orders where each side of the executed order (1) shares the same MPID and (2) is a Retail Order. Prior to October 2025, the second condition had a "time-in-force of Day" modifier attached to such Retail Orders. In October 2025, the Exchange removed the modifier.¹³ As a result, since October 2025, all Retail Orders where each side of the executed order shares the same MPID and each side of the executed order is a Retail Order are not charged a fee or provided a credit. When both sides of an execution are not Retail Orders or do not share the same MPID, the Exchange assesses a fee, if applicable, for removing liquidity, depending on the tier, and provides a credit, all as provided in the Retail Tiers pricing table.

The Exchange proposes to reinsert the "time-in-force of Day" modifier in the second condition described above. The Exchange has not observed an increase in the number of Retail Orders submitted to the Exchange as anticipated since the change was made in October 2025. The Exchange has now determined that it no longer wants such

orders to be fee liable and therefore proposes to adopt the "time-in-force of Day" modifier again. The Exchange expects the proposed change will result in more of such orders being directed to the Exchange resulting in an abundance of liquidity of Retail Orders that would be available for execution. While such Retail Orders that do not have a time-in-force of Day and remove liquidity will be charged a fee, the ETP holder's contra side Retail Order that adds liquidity would receive a rebate, as provided in the Retail Tiers pricing table.

As noted above, the Exchange currently provides tiered credits for Retail Orders that provide liquidity on the Exchange. Specifically, Section VII. Tier Rates—Round Lots and Odd Lots (Per Share Price \$1.00 or Above), provides a credit of \$0.0038 per share for Adding under Retail Tier 1, a credit of \$0.0037 per share for Adding under Retail Tier 2, a credit of \$0.0036 per share for Adding under Retail Tier 3, a credit of \$0.0034 per share for Adding under Retail Tier 4, and a credit of \$0.0035 per share for Adding under Retail Tier 5 and Retail Tier 6.¹⁴

Additionally, the Exchange currently charges a fee of \$0.0025 per share for Retail Orders with a time-in-force of Day that remove liquidity under Retail Tier 1 and Retail Tier 2 if an ETP Holder executes 170 million or more shares of such orders in a billing month or executes 0.055% of Dollar Plus Consolidated Volume,¹⁵ up to 250 million shares a month, whichever is higher, where the first 170 million shares of such orders or 0.055% of Dollar Plus Consolidated Volume, up to 250 million shares, whichever is higher, are not charged a fee. Since ETP Holders closely track the number of Retail Orders they send to the Exchange, the Exchange believes they can readily determine at the time of execution whether their Retail Orders will execute free of charge or be subject to a fee.

The Exchange also currently charges a fee of \$0.0025 per share for Retail Orders with a time-in-force of Day that remove liquidity under Retail Tier 3 and Retail Tier 5 if an ETP Holder registered as a Lead Market Maker ("LMM")¹⁶ or

Market Maker¹⁷ in at least 200¹⁸ Less Active ETPs¹⁹ in which it meets at least two Performance Metrics²⁰ executes 170 million or more shares of such orders in a billing month or executes 0.055% of Dollar Plus Consolidated Volume, up to 250 million shares a month, whichever is higher, where the first 170 million shares of such orders or 0.055% of Dollar Plus Consolidated Volume, up to 250 million shares, whichever is higher, are not charged a fee. Finally, the Exchange currently charges a fee of \$0.0025 per share for Retail Orders with a time-in-force of Day that remove liquidity under Retail Tier 6 where the first 65 million shares of such orders in a billing month are not charged a fee.

With this proposed rule change, the Exchange proposes to exclude MPL Orders and DPO orders submitted with a retail modifier from the fee applicable for Retail Orders with a time-in-force of Day that remove liquidity. The Exchange is not proposing any change to the rates applicable to Retail Orders or the criteria to qualify under any of the Retail Tiers.

The Exchange proposes to exclude MPL Orders and DPO orders submitted with a retail modifier from the Retail Tiers pricing table because they constitute a very small amount, as these orders are generally not used by retail investors or have a time-in-force of Day, and excluding them would also simplify the Exchange's pricing structure to the benefit of market participants generally. With this proposed rule change, such orders will be subject to the standard pricing applicable on the Exchange,

¹⁷ Pursuant to Rule 7.23–E(a)(1), all registered Market Makers, including LMMs, have an obligation to maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade. In addition, pursuant to Rule 7.24–E(b), LMMs are held to higher performance standards in the securities in which they are registered as LMM. LMMs can earn additional financial incentives for meeting the higher performance standards specified from time to time in the Fee Schedule. Only one LMM can be registered in a NYSE-Arca listed security, but that security can have an unlimited number of registered Market Makers. Market Makers can also be registered in securities that trade on an unlisted trading privileges basis on the Exchange.

¹⁸ The number of Less Active ETPs for a billing month will be calculated as the average number of Less Active ETPs in which an LMM is registered on the first and last business day of the previous month.

¹⁹ Pursuant to Section I under LMM Transaction Fees and Credits, the term "Less Active ETPs" means ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV. The term "ETP" means Exchange Traded Product listed on NYSE Arca.

²⁰ The applicable Performance Metrics are specified in Section III under LMM Transaction Fees and Credits on the Fee Schedule.

¹³ See Securities Exchange Act Release No. 104237 (November 21, 2025), 90 FR 54425 (November 26, 2025) (SR–NYSEArca–2025–75).

¹⁴ See Fee Schedule, Retail Tiers table under Section VII. Tier Rates—Round Lots and Odd Lots (Per Share Price \$1.00 or Above).

¹⁵ Dollar Plus Consolidated Volume means the full month equivalent of CADV in securities with a per share price \$1.00 or Above. See Fee Schedule, Section I. Definitions.

¹⁶ The term "Lead Market Maker" is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

where MPL Orders with a retail modifier would be charged a fee of \$0.010 per share for removing liquidity²¹ and DPO orders with a retail modifier would be charged the standard fee for removing liquidity of \$0.030 per share.²²

The Exchange believes the proposed rule change would continue to encourage additional liquidity on the Exchange. The Exchange does not know how much Retail Order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing how this proposed rule change would impact ETP Holders in terms of the number of Retail Orders directed to the Exchange or to other trading venues.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁵

Given this competitive environment, the proposal represents a reasonable attempt to continue to attract order flow to the Exchange.

As noted above, the competition for Retail Order flow is stark given the amount of retail limit orders that are routed to non-exchange venues. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. ETP Holders can choose from any one of the 18 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces constrain exchange transaction fees, particularly as they relate to competing for retail orders. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

In particular, the Exchange believes it is reasonable to not charge a fee or provide a credit to ETP Holders that qualify for Retail Tier 1, Retail Tier 2, Retail Tier 3, Retail Tier 5 and Retail Tier 6 where each side of the executed order (1) shares the same MPID and (2) is a Retail Order with a time-in-force of Day. As noted above, the Exchange currently provides credits ranging from \$0.0035 per share to \$0.0038 per share for Retail Orders where each side of such orders do not share the MPID and do not have a time-in-force of Day. The Exchange believes the proposed change will result in more of such orders being directed to the Exchange resulting in an abundance of liquidity of Retail Orders that would be available for execution.

The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits. Additionally, the proposed fee change would apply only to a subset of Retail Orders directed to the Exchange by ETP Holders, *i.e.*, those that share the same MPID and have a 'time-in-force' of Day that add and remove retail liquidity. All other Retail Orders would continue to be subject to current fees and credits.

The Exchange also believes it is reasonable to exclude MPL Orders and DPO orders submitted with a retail modifier from the fee applicable for Retail Orders with a time-in-force of Day that remove liquidity because they constitute a very small amount and excluding them would also simplify the Exchange's pricing structure to the benefit of market participants generally.

The Exchange believes that the proposed fee change will not have a disparate impact on ETP Holders or their trading behavior on the Exchange. The Exchange further believes that the proposal may result in increased

participation from retail liquidity providers while maintaining a competitive and performance-based pricing structure that better reflects current market conditions and trading volumes.

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

The Exchange believes that the proposal represents a reasonable effort to provide enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposal is an equitable allocation of fees and credits among its market participants because all ETP Holders that participate on the Exchange will be able to transact their Retail Orders where both sides of such orders share the same MPID and both sides are Retail Orders with a time-in-force of Day at no cost, *i.e.*, they would not receive any credit or pay any fee for their execution. The Exchange believes that its fee structure for such Retail Orders as a result of this proposed rule change should incentivize ETP Holders to continue to send such orders to the Exchange. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether the Exchange's current fee structure would result in any ETP Holder sending their Retail Orders to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of the opportunity presented by this proposed rule change but additional Retail Orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

²¹ See Fee Schedule, Section IV. Other Standard Rates for Securities with a Per Share Price \$1.00 or Above.

²² See Fee Schedule, Section III. Standard Rates—Transactions (applicable when Tier Rates do not apply).

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

²⁵ See *supra* note 7.

The Exchange further believes the proposal to exclude MPL Orders and DPO orders submitted with a retail modifier from the fee applicable to Retail Orders with a time-in-force of Day that remove liquidity is an equitable allocation of fees and credits as such orders constitute a very small amount of Retail Orders and thus would have a minimal impact to ETP Holders in their trading activity.

The Exchange believes the proposal equitably allocates fees and credits among market participants because all ETP Holders that participate on the Exchange would be subject to the proposed rule change on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes the proposed changes to Retail Orders are an equitable allocation of fees because the proposed changes, taken together, will incentivize ETP Holders to continue to direct their Retail Order flow to the Exchange. The Exchange also believes that the proposed rule change is equitable because it would apply to all similarly situated ETP Holders. As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting Retail Orders to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The Exchange believes that pricing is just one of the factors that ETP Holders consider when determining where to direct their order flow. Among other things, factors such as execution quality, fill rates, and volatility, are important and deterministic to ETP Holders in deciding where to send their order flow.

The Exchange believes that the proposed rule change equitably allocates its fees and credits because maintaining the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly

discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be similarly subject to the proposed changes. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed change would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders.

As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, in particular, Retail Orders. The Exchange notes that the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁷

²⁶ 15 U.S.C. 78f(b)(8).

²⁷ See *supra* note 7.

Intramarket Competition. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed change to adopt the 'time-in-force of Day' modifier for Retail Orders where both sides of the order share the same MPID would apply equally to all ETP Holders in that all ETP Holders would be able to transact such orders on the Exchange at no cost, *i.e.*, they would receive no credit or pay any fee. The Exchange believes that the resulting fee structure would continue to incentivize market participants to submit such orders for execution on a public and transparent market rather than on an off-exchange venue. Further, the proposal to exclude MPL Orders and DPO orders submitted with a retail modifier from the fee applicable to Retail Orders with a time-in-force of Day that remove liquidity will have a minimal impact on ETP Holders in their trading activity as such orders constitute a very small amount of all Retail Orders submitted to the Exchange. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency would benefit all market participants on the Exchange by enhancing market quality and would continue to encourage ETP Holders to send their orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem. All ETP Holders would be subject to the proposed changes, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated ETP Holders on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-

exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) is currently less than 15%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe this proposed fee change would impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁸ and Rule 19b-4(f)(2) thereunder²⁹ the Exchange has designated this Proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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.

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-2026-91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2026-91. 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-2026-91 and should be submitted on or before October 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-19037 Filed 9-16-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106347; File No. SR-NYSEAMER-2026-81]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 7.18E Regarding Initial Listing Regulatory Halts

September 14, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on

September 2, 2026, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.18E ("Trading Halts") regarding Initial Listing Regulatory Halts. 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

NYSE American LLC ("NYSE American" or the "Exchange") proposes to amend Rule 7.18E ("Trading Halts") regarding Initial Listing Regulatory Halts.

Background

Rule 7.18E(b)(1)(B) lists the types of discretionary regulatory halts the Exchange may declare, including, at subparagraph (i), an "Initial Listing Regulatory Halt."

The Initial Listing Regulatory Halt was first adopted in 2018 as NYSE Rule 123D(d) on the Exchange's affiliate exchange, the New York Stock Exchange LLC ("NYSE").⁴ The text of that rule

⁴ See Securities Exchange Act Release No. 82627 (February 2, 2028), 83 FR 5650 (February 8, 2018) (SR-NYSE-2017-30) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 3).

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

stated, in pertinent part, that the Exchange “may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange . . . immediately prior to the initial pricing.”⁵ NYSE’s Rule 19b–4 filing in support of the rule specified that the purpose of the rule change was to “provide authority to declare a regulatory halt for a new listing that is not the subject of an IPO.”⁶ In its order granting approval of the rule, the Commission noted that the rule “should facilitate the initial opening . . . of certain securities not listed in connection with an underwritten IPO”⁷

The Exchange adopted the Initial Listing Regulatory Halt as Rule 7.18E(e) in 2022,⁸ based on the text of NYSE Rule 123D(d). In August 2026, the Exchange’s Rule 7.18E (“Trading Halts”) was reorganized and the Initial Listing Regulatory Halt was moved to Rule 7.18E(b)(1)(B)(1) [sic], which currently defines it as “of a security that is the subject of an initial pricing on the Exchange that has not been listed on a national securities exchange immediately prior to initial pricing.”⁹

Proposed Change to Rule 7.18E(b)(1)(B)(i)

The Exchange proposes to amend the text of Rule 7.18E(b)(1)(B)(i) to explicitly specify that the Initial Listing Regulatory Halt does not apply to securities that are subject to an IPO. The Exchange believes that the transparency and clarity of the rule would be enhanced by specifying that the Exchange may declare an Initial Listing Regulatory Halt if a security is the subject of an initial pricing on the Exchange, “except for (a) IPOs in equity securities that are not derivative security products, or (b) securities that are listed on a national securities

exchange immediately prior to initial pricing.” Because both these exceptions are covered by the existing rule text, the proposed change is not substantive, but rather clarifying in nature.

Proposed Change to Rule 7.18E(b)(5)(B)(iv)

Rule 7.18E(b)(5)(B)(iv) describes how the Exchange will resume trading after an Initial Listing Regulatory Halt. The current rule text provides that the Exchange “will terminate an Initial Listing Regulatory Halt when the security is open for trading.” While that language is correct, it does not specify the mechanism by which the security will reopen. In fact, trading after an Initial Listing Regulatory Halt reopens with a Trading Halt Auction,¹⁰ which is the default described in Rule 7.18E(b)(5)(B).¹¹ The Exchange proposes to amend the rule text to specify explicitly that the Exchange will resume trading in a security after an Initial Listing Regulatory Halt “with a Trading Halt Auction.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹² Specifically, the proposal is consistent with Section 6(b)(5) of the Act¹³ because it would 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, in general, protect investors and the public interest.

The Exchange believes the proposed rule change would protect investors and the public interest and perfect the mechanism of a free and open market and a national market system by adding transparency and specificity to the rule. The existing text and history of the rule are clear that an Initial Listing Regulatory Halt will not be used in the case of an IPO of a corporate security, but the Exchange believes that stating that exception explicitly in the rule text will enhance the transparency of the rule and benefit the public interest. Similarly, the current rule text does not

specify the mechanism for reopening trading after an Initial Listing Regulatory Halt, and the Exchange believes that explicitly stating that trading resumes with a Trading Halt Auction will enhance the transparency of the rule. These proposed changes are not substantive in nature, but rather add further specificity and transparency to the existing rule text.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act¹⁴ in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below. Rather than impacting competition, the proposed changes are non-substantive and would enhance the specificity and transparency of the rule.

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

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 after the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

⁵ See NYSE Rule 123D(d) (SR–NYSE–2017–30 version).

⁶ See NYSE Form 19b–4 in support of SR–NYSE–2017–30, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2017/NYSE-2017-30,%20a.m.%203.pdf> (“Proposed Rule 123D(d) would provide authority for the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange, is not an IPO, and has not been listed on a national securities exchange . . . prior to the initial pricing.”).

⁷ See *supra* note 4, 83 FR at 5655.

⁸ See Securities Exchange Act Release No. 95945 (September 29, 2022), 87 FR 60428 (October 5, 2022) (SR–NYSEAMER–2022–44).

⁹ See Securities Exchange Act Release No. 102810 (April 10, 2025), 90 FR 16041 (April 16, 2025) (SR–NYSEAMER–2025–19), and further amended by Securities Exchange Act Release No. 105182 (April 8, 2026), 91 FR 18902 (April 13, 2026) (SR–NYSEAMER–2026–27).

¹⁰ The term “Trading Halt Auction” is defined in Rule 7.35E(e).

¹¹ Rule 7.18E(b)(5)(B) provides: “The Exchange will resume trading after a Regulatory Halt other than a SIP Halt with a Trading Halt Auction pursuant to Rule 7.35E, except as provided below”

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2026-81 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-2026-81. 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-2026-81 and should be submitted on or before October 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-19038 Filed 9-16-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106351; File No. SR-24X-2026-24]

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend 24X Rule 8.1(d) To Clarify Certain Disciplinary Functions by FINRA's Office of Disciplinary Affairs

September 14, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on September 8, 2026, 24X National Exchange LLC ("24X" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend subparagraph (d) of Rule 8.1 (Disciplinary Jurisdiction) to clarify that the Exchange and FINRA are parties to a regulatory services agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange, and that FINRA's Office of Disciplinary Affairs may review the Exchange's disciplinary matters, which means that some or all of the adjudication functions described in the Exchange's rules may be provided by FINRA pursuant to the terms of that regulatory services agreement. The proposed rule change is available on the Exchange's website at <https://equities.24exchange.com/regulation> 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

Exchange Rule 8.1 (Disciplinary Jurisdiction) establishes the Exchange's jurisdiction over disciplinary matters that arise from the alleged violation of Exchange rules, federal securities laws, or related provisions by a Member³ or person associated with a Member. Currently, subparagraph (d) of Rule 8.1 states that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions, and that the Exchange shall specify to what extent Exchange rules shall govern Exchange disciplinary actions and to what extent the rules of the other self-regulatory organization shall govern such actions. The Exchange proposes to amend Rule 8.1(d) to remove non-specific references to other self-regulatory organizations and to clarify that the Exchange and FINRA are parties to a regulatory services agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange, and that FINRA's Office of Disciplinary Affairs may review the Exchange's disciplinary matters, which means that some or all of the adjudication functions described in the Exchange's rules may be provided by FINRA pursuant to the terms of that regulatory services agreement.

The proposed changes are intended to clarify the manner in which the Exchange contracts with other self-regulatory organizations by specifying that FINRA's Office of Disciplinary Affairs is the entity that may review the Exchange's disciplinary matters and provide the adjudication functions described in the Exchange's rules pursuant to the regulatory services agreement between the Exchange and FINRA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁴ in general, and with Section 6(b)(5) of the Act⁵ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

³ See 24X Rule 1.5(u).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to update Rule 8.1(d) will ensure that the Rule more clearly describes the manner in which FINRA will provide regulatory services to the Exchange with respect to disciplinary matters pursuant to a regulatory services agreement. The proposed amendment 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 proposed amendment would not be inconsistent with the public interest and the protection of investors because investors would not be harmed by the proposed changes, but instead would benefit from the increased transparency and clarity that the proposed changes will provide.

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 competitive issues but rather is concerned solely with updating Rule 8.1(d) to more clearly describe the manner in which the Exchange contracts with other self-regulatory organizations with respect to disciplinary matters.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6) thereunder.⁷ A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-24X-2026-24 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-24X-2026-24. 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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 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.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ 15 U.S.C. 78s(b)(2)(B).

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-24X-2026-24 and should be submitted on or before October 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-19040 Filed 9-16-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0233]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Form 2-E, Report Pursuant to Rule 609 and Regulation E

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 submitting to the Office of Management and Budget (OMB) this request for extension of the proposed collection of information. Rule 609 (17 CFR 230.609) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires small business investment companies and business development companies that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E under the Securities Act of 1933 (17 CFR 230.601 to 610a) to report semi-annually on Form 2-E (17 CFR 239.201) the progress of the offering. The form solicits information such as the dates an offering commenced and was completed (if completed), the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. The information provided

¹⁰ 17 CFR 200.30-3(a)(12).

on Form 2-E assists the staff in monitoring the progress of the offering and in determining whether the offering has stayed within the limits set for an offering exempt under Regulation E.

Although there have been no filings of Form 2-E since 2017, for administrative purposes the Commission estimates that, on average, approximately one respondent submits a Form 2-E filing each year. The Commission further estimates that this information collection imposes an annual burden of four hours and imposes no annual external cost burden.

The collection of information under Form 2-E is mandatory. The information provided by the form will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202606-3235-019 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 19, 2026.

Dated: September 14, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-19035 Filed 9-16-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0621]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Form 15F

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 15F (17 CFR 249.324) is filed by a foreign private issuer when terminating or suspending its Securities and Exchange Act of 1934 ("Exchange Act") reporting obligations. Form 15F

requires a foreign private issuer to disclose information that helps investors understand the foreign private issuer's decision to terminate or suspend its Exchange Act reporting obligations and assists the Commission staff in determining whether the issuer is eligible to terminate or suspend its Exchange Act reporting obligations. The information required by Form 15F is mandatory, and Form 15F is publicly available on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. We estimate that Form 15F takes approximately 30 hours to prepare and is filed once per year by approximately 23 foreign private issuers, for a total of approximately 23 responses annually. We estimate that 25% of the 30 hours per response (7.5 hours per response) is carried internally by the issuer for a total annual reporting burden of 173 hours (7.5 hours per response × 23 responses). We estimate that 75% of the 30 hours per response (22.5 hours per response) is carried externally by outside professionals retained by the issuer at an estimated rate of \$600 per hour for a total annual cost burden of \$310,500 (\$600 per hour × 22.5 hours per response × 23 responses annually).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202605-3235-007 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by October 19, 2026.

Dated: September 14, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-19034 Filed 9-16-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0754]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 30b1-10, Form N-RN

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 submitting to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 30b1-10 [17 CFR 270.30b1-10] and Form N-RN [17 CFR 274.223] require registered open-end management investment companies (not including entities regulated as money market funds under 17 CFR 270.2a-7), registered closed-end funds, and business development companies (collectively, "funds"), to file a current report on Form N-RN on a non-public basis when certain events related to their liquidity and events regarding funds' compliance with the VaR-based limit on fund leverage risk in 17 CFR 270.18f-4 ("rule 18f-4") occur. The first category of information reported on Form N-RN concerns events under which more than 15% of an open-end fund's net assets are, or become, illiquid investments that are assets as defined in 17 CFR 270.22e-4 ("rule 22e-4") and when holdings in illiquid investments are assets that previously exceeded 15% of a fund's net assets have changed to be less than or equal to 15% of the fund's net assets. The second category of information reported on Form N-RN regards events for certain open-end funds under which a fund's holdings in assets that are highly liquid investments fall below the fund's highly liquid investment minimum defined in rule 22e-4 for more than 7 consecutive calendar days. The third category of information reported on Form N-RN regards information about a fund's breaches of the VaR test under rule 18f-4. A report on Form N-RN is required to be filed, as applicable, within one business day of the occurrence of one or more of these events. In addition, a fund is in certain cases required to file a second Form N-RN when it is no longer in breach of the applicable limit.

Based on historical filing data and projected estimates of the annual number of VAR-based filings, the staff estimates that the Commission will receive roughly 31 reports per year on Form N-RN on average. When filing a report on Form N-RN, staff estimates that a fund will spend on average approximately 4 hours of a lawyer's and a computer programmer's time to prepare, review, and submit Form N-RN.¹ We estimate the total time per

¹ To calculate the occupational hourly rates used in this release, the Commission uses occupational

response to be \$2,420.² Accordingly, in the aggregate, staff estimates that compliance with rule 30b1–10 and Form N–LIQUID will result in a total annual burden of approximately 124 burden hours and total annual time costs of approximately \$75,020.³

Compliance with rule 30b1–10 is mandatory for all funds. Responses to the disclosure requirements will be kept confidential. The estimate of average burden hours is made solely for the purposes of the PRA. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to enable the Commission to receive information on fund liquidity events more uniformly and efficiently, and to enhance the Commission's oversight of funds when significant liquidity events occur and its ability to respond to market events.

mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). See Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/oes/>; see also Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/soc/> (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), available at https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/eci/>. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis's annual gross output data for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, <https://www.bea.gov/data/industries/gross-output-by-industry>; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/oes/>. The final product is the occupational hourly rate. See generally UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), available at <https://www.sec.gov/files/method-occupational-hourly-rates.pdf>.

² This estimate is based on the following calculations: (\$774 hourly wage rate for lawyer + \$436 hourly wage rate for computer programmer) / 2 = \$605 blended hourly wage rate. \$605 blended hourly wage rate × 4 hours = \$2,420.

³ This estimate is based on the following calculations: 31 reports filed per year × 4 hours per report = approximately 124 total annual burden hours. 31 reports filed per year × \$2,420 in costs per report = \$75,020 total annual costs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202606-3235-021 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 19, 2026.

Dated: September 14, 2026.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–19033 Filed 9–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106352; File No. SR–LCH SA–2026–006]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the LCH SA CDS Clear Trade Registration Fund

September 14, 2026.

I. Introduction

On July 20, 2026, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission (the "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 establish a Trade Registration Fund. The proposed rule change was published for comment in the **Federal Register** on August 5, 2026.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

LCH SA is a clearing agency registered with the Commission. Through its CDS Clear business unit, LCH SA provides central counterparty ("CCP") services for security-based swaps, including credit default swaps ("CDS") and options on CDS. LCH SA is an affiliate of LCH, Ltd, through

common ownership by LCH Group Holdings Limited ("LCH Group"). LCH SA's ultimate parent company is London Stock Exchange Group.

As a CCP, LCH SA is exposed to certain risk, including the risk that Clearing Members ("Members") may default on their obligations. In that case, as a CCP, LCH SA is obligated to perform the obligations of the defaulting Members. To mitigate such risk and control exposures to its Members, LCH SA requires that Members deposit a certain amount of collateral, or margin, in respect of the transactions that they submit for clearing. The Proposed Rule Change would introduce a form of margin forbearance, through amendments to LCH SA's CDS Clearing Rule Book ("Rule Book")⁴ and CDS Clearing Procedures ("Procedures").

A. Description of Proposed Rule Changes

The Proposed Rule Change would establish a form of margin forbearance, or a delay in posting sufficient margin, to facilitate the registration (*i.e.*, acceptance for clearing) of trades submitted by Members. As noted, LCH SA requires that Members deposit a certain amount of collateral, or margin, in respect of the transactions that they submit for clearing. If the amount of collateral, including a collateral buffer, is insufficient, LCH SA's current policy is to reject such trades from clearing. The Proposed Rule Change would create a Trade Registration Fund ("TRF") facility which could be used by Members to satisfy the requisite collateral and thereby avoid trade rejections.

Currently, Members contribute funds to the CDS Default Fund, a shared pool of assets, including cash and liquid assets. LCH SA can use the CDS Default Fund to resolve losses in case of a Member's default. LCH SA proposes to require Members to contribute to the TRF, which will be separate from the Default Fund, and allow Members to draw upon this facility in certain situations where additional collateral is necessary to avoid trade rejections. LCH SA proposes to implement this change in the following ways.

i. CDS Clearing Rule Book

LCH SA proposes to introduce new terms to its Rule Book, which will be

⁴ In order to formalize the relationship between LCH SA and its clearing members, LCH SA adopted the Rule Book. See LCH SA's website for the latest version of the LCH SA CDS Clearing Rule Book. <https://www.lseg.com/en/post-trade/clearing/clearing-resources/rulebooks/lch-sa#t-over-the-counter-credit-default-swaps>. Capitalized terms not otherwise defined herein have the meanings assigned to them in Rule Book.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 106024 (July 31, 2026), 91 FR 50584 (Aug. 5, 2026) (File No. SR–LCH SA–2026–006) ("Notice"). CDS Clearing Procedures ("Procedures").

incorporated into provisions surrounding the new TRF. A “TRF Allowance” will refer to margin provided by LCH SA to Members in LCH SA’s discretion, while the “Available TRF Allowance” will refer to the portion of the TRF Allowance not already used up as margin by the Member. The “TRF Contribution” will describe the amount that a Member must contribute, as calculated by LCH SA based on a Member’s usage, which will be called the “TRF Utilization.” LCH SA will not include the TRF Allowance within its calculation for contributions to the CDS Default Fund.

“Credit Tolerance” will also be included as a new term within the Rule Book. As LCH SA has explained, this would be a second layer of forbearance that could be extended by LCH SA if a Member has already exhausted its Available TRF Allowance, although LCH SA does not intend to disclose the maximum value of this additional tolerance, including to the Member itself, because of what it describes as operational flexibility.⁵ “Available Credit Tolerance” will refer to whatever portion remains of the Credit Tolerance that is not already used for margin by a Member. Finally, LCH SA will also define “Tolerance Check,” whereby the total forbearance available to a Member through both the TRF Allowance and the Credit Tolerance will be determined by LCH SA. Section 2.3 of the Rule Book would be amended to include a new paragraph making clear that these facilities would be available on a first-in-time basis, allocated in the order that intraday trades are received.

Operationally, LCH SA proposes to create the TRF by separating the TRF Allowance from the CDS Default Fund. Currently, Members must contribute €10 million to the CDS Default Fund. Under LCH SA’s new procedures, the contribution amount would remain the same, at a minimum, but be split so that €7 million is apportioned to the CDS Default Fund while at least €3 million will be the TRF Contribution.

A “TRF Initial Member,” another new term proposed for the Rule Book, will be a Member who has not used its TRF Allowance in the trailing 90 day period and would therefore be subject only to the €3 million minimum payment. Other Members would see their contribution calculated relative to the average of the peak daily TRF Utilization over the preceding 180 days, divided by the total of all TRF Utilization of all non-defaulting

Members.⁶ LCH SA will refer to this as the “TRF Contribution Percentage,” which it will use to calculate the TRF Contribution by multiplying it against the TRF Allowance. Descriptions of these calculations will be moved from Article 4.4.1.3 of the Rule Book to amended Section 6.6 of the Procedures. Amended Section 6.5 of the Procedures, as well as Article 4.4.1.2 of the Rule Book, would also make clear that the TRF Allowance Amount, when added to the Combined Unmargined Risk,⁷ will constitute the CDS Default Fund.

LCH SA proposes to add Article 4.2.2.5 to the Rule Book in order to explain how the TRF Allowance and Credit Tolerances are intended to function. Neither facility is intended to lead to a transfer of collateral or payment from LCH SA, or to use assets contained in the CDS Default Fund (except following a Member’s default). Because the facilities are intended only as forbearance, Members would be required to transfer additional collateral in excess of any margin shortfall resulting from the utilization of the facilities at the next collateral call, but LCH SA may require it sooner. New language in Article 4.2.2.6 would limit the return of collateral to Clearing Members only to instances where they have not utilized either the TRF Allowance or Credit Tolerance facilities. And additions to Article 4.2.3.1 would add the TRF Utilization amount to a list of items disclosed to Members, such as the margin balance, shortfall, and requirement for margin accounts. Other changes to the Rule Book would be administrative, such as the updating of rule references or re-working numbering to account for added and amended provisions.

ii. CDS Clearing Procedures

The Proposed Rule Change would also modify the Procedures to describe the changes related to the TRF Allowance.

Specifically, Section 2.3 would be renamed to add language indicating that it will apply to the TRF Allowance and Credit Tolerance. A new paragraph (e) will be added to the section describing how these facilities would be used. For example, it will make clear that the Available TRF Allowance, followed by available Credit Tolerance, could be

allocated by LCH SA to satisfy notional and collateral checks prior to the novation of eligible transactions. LCH SA would determine the maximum value of these facilities, and the TRF Allowance would be notified to the Members, while the Credit Tolerance, as also made clear in the Rule Book, would not. Additional language would clarify that Members would not be able to direct these facilities to any specific account, and that the facilities would become available on a first in time basis, tied to the order in which LCH SA receives and processes trades.

New paragraph (e) would also make clear that when a Member is subject to a risk-reducing event, thereby freeing up collateral, it would first be allocated to the Credit Tolerance, followed by the TRF Allowance, if applicable, rather than other collateral posted by the Member. In this way, the new facilities would always be drawn down first. The paragraph would add a further clarification that the maximum value of the TRF Allowance, normally consisting of several factors, would also include the internal credit score of the Member.

Finally, changes would include references, where relevant, to the Available TRF Allowance and Available Credit Tolerance, and other technical amendments or corrections to typographical errors.

LCH SA has also proposed to make changes to Section 3 of the Procedures. These changes would ensure that the TSF Allowance and the Credit Tolerance are not currently utilized before LCH SA accepts a request for the return of collateral to Clearing Members in certain circumstances, such as for non-Euro denominated cash collateral as outlined in paragraphs 3.8 (h) and (i), eligible collateral provided on a bilateral basis as outlined in paragraph 3.10.1(c), or eligible collateral held at the Bank of New York Mellon as outlined in paragraph 3.17(b).

Section 6 of the Procedures would also be amended by LCH SA to incorporate the TRF Allowance and Credit Tolerance. Section 6.2 would define terms relevant to the facilities, such as the TRF Contribution Percentage, while Section 6.3 would explain the definition of the TRF Initial Member. Section 6.5 would clarify that the CDS Default Fund is equal the sum of the Combined Unmargined Risk and the TRF Allowance, and state the formula that LCH SA uses to arrive at this calculation. Finally, Article 4.4.1.3 of the Rule Book would be moved to the Procedures, specifically amended Section 6.6. It will state the operational changes to the CDS Default Fund, such as the separation of the TRF Allowance

⁶ LCH SA has said that the contribution would top out at €30 million, thereby capping Member contributions. See Notice, at 50587.

⁷ As defined in the Rule Book, Combined Unmargined Risk means the theoretical losses caused by an Event of Default occurring in respect of the Members that are responsible for the two highest daily Group Member Uncovered Risks over the last sixty Clearing Days plus a buffer equal to 10 percent.

⁵ See Notice, at 50586.

Amount from the CDS Default Fund, and the subsequent reduction of the minimum ordinary contribution to €7 million, along with a €3 million minimum TRF contribution.

Section 8 of the Procedures LCH SA would also see amendments, as paragraph 8.3(a) would make clear that multiple failures by a Member to submit a complete price submission file could lead to an increase in the ordinary contribution, but not the TRF Contribution.

iii. LCH Counterparty Credit Risk Policy

LCH SA has also proposed to make changes to the LCH Counterparty Credit Risk Policy (“CCRP”). New section 9.7 would set daily credit limits on TRF usage, expressed as a percentage of the total CDS Clear TRF. It would also set a group cap whereby an affiliated group of Members could not use TRF in excess of the sum of that group’s Default Fund contributions plus its TRF contributions. A table would be added, which would make clear the limit on Member tolerance, or maximum TRF, along with the group cap limit that is tied to an internal credit score.⁸

Other changes to the CCRP would include changes unrelated to the TRF. For example, Section 6.1, which requires that every relevant counterparty, including certain non-US dormant Members, go through a documented credit review before being onboarded, would also be subject to a new review on a 12 months rolling basis, instead of just annually. Section 6.2 would introduce new minimum Internal Credit Scores for two categories of RepoClear sponsored clearing participants, including Guaranteed Sponsored Members, formalizing a minimum creditworthiness standard. Additionally, amendments to Section 6.3 of the Policy would require that the LCH Executive Risk Committee (“ERCo”) sign off on new Clearing Member applications, including cases where a member of one of LCH SA’s affiliated CCPs applies to join a different affiliated CCP, and which would also implicate the new credit scoring rule. Changes would also extend new participant categories within the CCRP, including New Sponsored Clearing Agents and Guaranteeing Agent Members. Finally, it would be made clear that existing Members that extend to a new business line, or a different service, would need Credit Risk Team and ERCo approval.

Certain annexes within the CCRP would also see revisions under the

Proposed Rule Change. Annex I of Section 9.2 would ensure that non-US business Guaranteed Sponsored Members have their exposure monitoring requirements tracked the same way as other sponsored participants, while changes to Annex I under Section 9.3 would extend tracking of a Member’s stress-test losses and default fund contribution to the non-US business RepoClear Guaranteed Sponsored Clearing structure. The Guaranteeing Agents backing the Guaranteed Sponsored Members would have their exposure expanded to also include the stress losses of the Members they guaranty so that the exposure captures the risk an agent takes on by guaranteeing others in addition to its own positions.⁹ And Annex I under Section 9.11 would create a new framework, the Credit Risk Resources (“CRR”), which would tie additional resource requirements to the combined credit quality of both the sponsored Member and the Guaranteeing Agent, whereby a decline in the combined credit quality would require greater stress-loss coverage and an initial margin multiplier. The proposed rule change would amend a table in Section 9.2 to add Guaranteed Sponsored Members. This change would confirm that LCH SA monitors certain thresholds for Guaranteed Sponsored Members daily, such as ICS and initial margin to net asset value.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.¹⁰ Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”¹¹

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,¹² and any failure of an SRO to provide this

information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.¹³ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.¹⁴

After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to LCH SA. More specifically, for the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹⁵ and Rules 17Ad–22(e)(4)(i)¹⁶ and 17Ad–22(e)(6)(ii)(B)¹⁷ thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.¹⁸ Based on a review of the record, and for the reasons discussed below, the proposed changes by LCH SA are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at LCH SA.

LCH SA’s changes are designed to help ensure that transactions are completed as entered. Without the TRF, Members face the prospect of having trades rejected from clearing because of insufficient collateral, including a collateral buffer, even when the insufficiency may be covered by a subsequent margin call, as in intraday activities. Indeed, LCH SA’s policy is to reject trades where Members do not have sufficient collateral, currently on deposit at LCH SA, to cover such trades. The TRF, however, would help facilitate the acceptance of new trades by allowing Members additional collateral leeway in the form of forbearance, which LCH SA interprets as delaying collection of additional collateral until the next collateral call, while having on hand financial resources, in the form of the TRF, which LCH SA could draw on

¹³ *Id.*

¹⁴ *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

¹⁵ 15 U.S.C. 78q–1(b)(3)(F).

¹⁶ 17 CFR 240.17ad–22(e)(4)(i).

¹⁷ 17 CFR 240.17ad–22(e)(6)(ii)(B).

¹⁸ 15 U.S.C. 78q–1(b)(3)(F).

⁹ Net of any prefunded resources already posted by the guaranteeing agents.

¹⁰ 15 U.S.C. 78s(b)(2)(C).

¹¹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

¹² *Id.*

⁸ The Policy makes clear that these limits are to be applied daily per Clearing Member.

if needed in the event of a default.¹⁹ While Members would still be required to make additional collateral deposits at subsequent collateral calls, and to have their deposits into the TRF calculated relative to its utilization, the TRF would allow submitted trades to avoid immediate rejection.

The Proposed Rule Change therefore will promote the acceptance of trades that may have otherwise been rejected, while ensuring that sufficient collateral at LCH SA can support those trades. Therefore, it will contribute to the prompt and accurate clearing of securities transactions.

Changes to the CCRP, as well, help promote the prompt and accurate clearance and settlement of securities transactions. These changes would allow LCH SA to improve its risk assessment. For example, the exposure to LCH by Guaranteeing Agents, who are responsible for the activities of Guaranteed Sponsored Members, would be subject to stress losses in addition to those of their guarantors. In this way, LCH SA can better account for the risk it undertakes, thereby protecting its continued viability and ensuring it can continue to guarantee trades as a central clearing counterparty.

Additional changes to the CCRP would also set daily credit limits on the TRF usage, limiting LCH SA's credit exposure. The group cap on TRF usage especially would limit the risk undertaken by LCH SA as it would prevent multiple affiliated entities from each taking advantage of individual Member Tolerance and thereby expose LCH SA to a potential combined risk.

For the reasons stated above, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.²⁰

B. Consistency With Rule 17Ad–22(e)(4)(i) Under the Act

Rule 17Ad–22(e)(4)(i) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.²¹

As described above, LCH SA has designed the TRF Allowance to be

appropriately sized to the contributions of the respective Members, and to the risk their activities expose LCH SA. For example, the TRF Allowance will be funded, initially, by a minimum set contribution, and then adjusted upwards to reflect the TRF Utilization of the Member, as calculated by LCH SA. This facility is, therefore, a separate pool of funds, funded by Members, which LCH SA can draw from on behalf of Members in certain circumstances, and not a debt facility reliant on an extension of credit. Additionally, LCH SA will only approve trades that do not exceed collateral requirements as supplemented by the new TRF Allowance and Credit Tolerance, and then require Members to deposit additional collateral at the next collateral call. In this way, LCH SA ensures that adequate collateral is always posted, even as it provides more flexible ways for Members to post such collateral. Moreover, because the facilities intended to be used will be pre-funded through Member contributions, LCH SA will avoid risking the extension of unfunded commitments. Member Tolerance would also ensure that forbearance extensions are sized to each Member based on its creditworthiness and contributions, while LCH SA's discretion in requiring collateral transfers at any time to cover margin shortfall would further support mitigation of its credit exposure.

These changes would help LCH SA better measure and manage credit exposure in other ways. It would introduce new internal credit scores, a new cadence of credit review, and formalize a new creditworthiness standard for certain Members, which would mitigate credit exposure by limiting unfunded Member transactions. Similarly, LCH SA's formula for determining a Member's TRF Contribution would quantify a Member's draw on the facility and ensure that contributions are related to usage, thereby imposing costs on higher risk Members, which would also ultimately mitigate credit exposure. Finally, LCH SA would also review its exposure to the creditworthiness of sponsored member guarantors, helping to ensure that LCH SA's risk management framework adequately manages LCH SA's credit exposure associated with the TRF.

For the reasons stated above, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(4)(i) under the Act.²²

C. Consistency With Rule 17Ad–22(e)(6)(ii)(B) Under the Act

Rule 17Ad–22(e)(6)(ii)(B) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, monitors intraday exposures on an ongoing basis.²³

LCH SA would monitor a Member's use of the TRF on an intraday basis. Before accepting for clearing and novating an intraday trade, LCH SA will, among other things, conduct a Tolerance Check. As discussed above, a Tolerance Check is the process by which LCH SA determines whether there is sufficient Available TRF Allowance and, as the case may be, sufficient Available Credit Tolerance, in respect of a Member to satisfy the margin requirement for a new trade. Thus, LCH will monitor, on an intraday basis, its exposures to Members through the TRF. Additionally, the Proposed Rule Change incorporates additional measurement functions within LCH SA's clearing model, such as monitoring the credit exposure of GAMs alongside GSMs. By including GSMs within a monitoring framework in order to determine credit risk exposure, LCH SA could better ensure that trading activities, including margin, are adequately funded.

For the reasons stated above, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(6)(ii)(B) under the Act.²⁴

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act,²⁵ and Rules 17Ad–22(e)(4)(i)²⁶ and 17Ad–22(e)(6)(ii)(B)²⁷ thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act²⁸ that the proposed rule change (SR–LCH SA–2026–006) be, and hereby is, approved.²⁹

²³ 17 CFR 240.17ad–22(e)(6)(iii)(B).

²⁴ *Id.*

²⁵ 15 U.S.C. 78q–1(b)(3)(F).

²⁶ 17 CFR 240.17ad–22(e)(4)(i).

²⁷ 17 CFR 240.17ad–22(e)(6)(iii)(B).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ Notwithstanding Credit Tolerance, which would be unfunded, though still subject to subsequent collateral calls.

²⁰ *Id.*

²¹ 17 CFR 240.17ad–22(e)(4)(i).

²² *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026–19041 Filed 9–16–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106353; File No. 600–36]

Self-Regulatory Organizations; LCH SA; Order Granting Conditional Exemptive Relief Pursuant to Section 36 of the Securities Exchange Act of 1934 Relating to Rule Filing Requirements

September 15, 2026.

I. Introduction

On December 22, 2025, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed an application with the Securities and Exchange Commission (“Commission”), to amend exemptive relief granted to it by the Commission on December 29, 2016 (“Request for Exemptive Relief”) ¹ pursuant to section 36 of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),² in accordance with the procedures set forth in Rule 0–12 under the Act.³ As part of the Commission’s 2016 order granting LCH SA’s application for registration as a clearing agency, the Commission granted LCH SA exemptions from certain requirements of the Act and the rules thereunder, including an exemption from section 19(b) of the Act⁴ and Rule 19b–4⁵ thereunder with respect to filing certain proposed rule changes relating to its business lines operating outside of the U.S. (“Current Exemptive Relief”).⁶ LCH SA’s Request for Exemptive Relief would amend the

Current Exemptive Relief as it relates to section 19(b) of the Act⁷ and Rule 19b–4⁸ thereunder relating to LCH SA’s clearing services.

Notice of the Request for Exemptive Relief (“Notice”) was published in the **Federal Register** on May 6, 2026.⁹ The Commission received two comment letters on the Notice.¹⁰ Both letters supported the Request for Exemptive Relief and requested the Commission grant it. Neither letter suggested any changes to the conditions to the relief. For the reasons discussed below, this order grants LCH SA conditional exemptive relief from certain requirements under section 19(b) of the Act¹¹ and Rule 19b–4¹² thereunder.

II. Background

LCH SA is a clearing agency currently registered with the Commission for the purpose of clearing security-based-swaps.¹³ It clears security-based-swaps through its CDSClear business unit, for persons in the U.S. and abroad.¹⁴ When the Current Exemptive Relief was approved, LCH SA had three additional business units—(i) EquityClear, for clearing equities, debt instruments, and futures contracts; (ii) CommodityClear for clearing futures and options for agricultural and energy products; and (iii) RepoClear for clearing repurchase and cash transactions on Euro-denominated government and supranational debts.¹⁵ These units operated entirely outside of the U.S. and did not have any U.S. persons as Clearing Members, and LCH SA did not seek to offer them to any U.S. persons (“Non-U.S. Business”).¹⁶

The Current Exemptive Relief exempts LCH SA from filing a proposed rule change under section 19 of the Act¹⁷ and Rule 19b–4¹⁸ thereunder if the proposed rule change (i) primarily affects LCH SA’s clearing operations with respect to its Non-U.S. Business, and (ii) does not significantly affect any CDSClear operations or any rights or

obligations of LCH SA with respect to CDSClear services or persons using such services (“Non-U.S. Business Rule Change”).¹⁹ Even if a proposed rule change primarily affects the Non-U.S. Business, the Current Exemptive Relief does not apply if it would significantly affect CDSClear operations, services, or persons using those services. Further, as a condition to the Current Exemptive Relief, LCH SA must provide Commission staff with notice of its Non-U.S. Business Rule Changes within three business days following approval by LCH SA’s national competent authorities.²⁰ The Commission granted this relief because the Non-U.S. Business did not and would not have U.S. persons as Clearing Members and the terms of the relief ensured that the Commission would have the opportunity to review proposed rule changes that impacted U.S. persons.²¹

II. Request for Exemptive Relief

Currently, LCH SA has three business units—CDSClear, RepoClear, and DigitalAssetClear.²² RepoClear and DigitalAssetClear currently comprise the Non-U.S. Business, because LCH SA operates them entirely outside of the U.S. and because they do not have any U.S. persons as Clearing Members.²³ CDSClear is the only service currently offered in the U.S. or to U.S. persons.²⁴

LCH SA now seeks to allow U.S. persons to join RepoClear as Clearing Members, which would mean that RepoClear would no longer be a Non-U.S. Business under the Current Exemptive Relief.²⁵ Therefore, LCH SA would classify RepoClear under a new category, as a “Non-Registrable Business.”²⁶ LCH SA represents that the Non-Registrable Business does not include any clearance and settlement services pertaining to any purchase or sale transaction in U.S. Treasury securities or repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities; any other transaction involving U.S. Treasury securities; or any clearance and settlement services pertaining to any securities meeting the definition of “government securities” in section

³⁰ 17 CFR 200.30–3(a)(12).

¹ Letter from Nicolas Dot, Chief Compliance Officer, LCH SA, dated December 22, 2025 (“Application”).

² 15 U.S.C. 78mm.

³ 17 CFR 240.0–12. Exchange Act Rule 0–12 sets forth procedures for filing applications for orders for exemptive relief pursuant to section 36. The Application is available on the Commission’s website at <https://www.sec.gov/files/rules/sro/lchsa/2026/34-105357.pdf>. Defined terms in this order are the same as used in the Application unless we note otherwise.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 17 CFR 240.19b–4.

⁶ Order Granting Application for Registration as a Clearing Agency and Request for Exemptive Relief, Exchange Act Release No. 79707 (Dec. 29, 2016), 82 FR 1398, 1412 (Jan. 5, 2017) File No. 600–36 (“Order”).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 240.19b–4.

⁹ Exchange Act Release No. 105357 (May 4, 2026), 91 FR 24617 (May 6, 2026) (File No. 600–36) (“Notice”).

¹⁰ See Letter from Jennifer W. Han, Managed Funds Association, dated June 4, 2026; Letter from Jiri Krol, Alternative Investment Management Association, dated June 5, 2026. The public comment file for the Application is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/public-comments/600-36>.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 240.19b–4.

¹³ Order, 82 FR at 1410.

¹⁴ Order, 82 FR at 1398.

¹⁵ Notice, 91 FR at 24617.

¹⁶ Order, 82 FR at 1398; 1411.

¹⁷ 15 U.S.C. 78s(b).

¹⁸ 17 CFR 240.19b–4.

¹⁹ Order, 82 FR at 1414.

²⁰ Order, 82 FR at 1414.

²¹ Order, 82 FR at 1411–12; Notice, 91 FR at 24617.

²² Notice, 91 FR at 24617. The EquityClear and CommodityClear business units have both closed. Notice, 91 FR at 24617. LCH SA will provide clearing services through DigitalAssetClear for cash-settled Bitcoin index futures and options contracts. Notice, 91 FR at 24617 n.18.

²³ Notice, 91 FR at 24617.

²⁴ Notice, 91 FR at 24617.

²⁵ Notice, 91 FR at 24617–18.

²⁶ Notice, 91 FR at 24617; Application at 4.

3(a)(42) of the Act.²⁷ LCH SA requests an amendment to the Current Exemptive Relief as it relates to its Non-Registrable Business to provide limited, conditional relief for RepoClear while allowing LCH SA to onboard U.S. Clearing Members to RepoClear.

Specifically, LCH SA requests an amendment to the Current Exemptive Relief to provide its Non-Registrable Business (*i.e.*, RepoClear) with an exemption from section 19(b)(2) of the Exchange Act.²⁸ LCH SA requests that, for as long as the Non-Registrable Business has U.S. Clearing Members, the Commission allow LCH SA to file with the Commission proposed rule changes related to the Non-Registrable Business solely pursuant to section 19(b)(3)(A) of the Act²⁹ and paragraph (f)(6) of Rule 19b-4 thereunder,³⁰ provided that, consistent with the Current Exemptive Relief, any such proposed rule change (i) primarily affects LCH SA's clearing operations with respect to the Non-Registrable Business, and (ii) does not significantly affect any CDSClear operations or any rights or obligations of LCH SA with respect to the CDSClear services or persons using the CDSClear services ("Non-Registrable Business Rule Change").³¹ Under this proposed relief, LCH SA will not file a Non-Registrable Business Rule Change pursuant to section 19(b)(2) of the Act,³² and a Non-Registrable Business Rule Change will take effect upon filing without an approval order by the Commission.³³

LCH SA further proposes that this relief will end following written notice from LCH SA to the Commission that the Non-Registrable Business no longer has any U.S. Clearing Members. After such a notice, all Non-Registrable Business Rule Changes will be treated like Non-U.S. Business Rule Changes under the Current Exemptive Relief.³⁴

The Request for Exemptive Relief identifies several additional conditions:

- LCH SA's obligation to file with the Commission the Non-Registrable Business Rule Changes will begin on the effective date that the first U.S. Clearing Member is admitted as a member of the Non-Registrable Business.

- LCH SA will continue to comply with the terms of the Current Exemptive Relief in respect of the Non-U.S. Business (including DigitalAssetClear and any future business unit that LCH SA operates entirely outside the U.S. that does not have any U.S. persons as Clearing Members) by providing notice to Commission Staff of its Non-U.S. Business Rule Changes within three (3) business days of such rules taking effect pursuant to the requirements of the European Market Infrastructure Regulation or LCH SA's national competent authorities.

- LCH SA must provide prompt written notice to the Commission in the event that the Non-Registrable Business onboards U.S. Clearing Members or ceases to have U.S. Clearing Members.

- LCH SA must continue to file Non-Registrable Business Rule Changes, and otherwise comply with the terms of the requested relief until LCH SA has, with respect to the Non-Registrable Business, closed all transactions and positions involving U.S. Clearing Members and their clients; completed final settlement of amounts owed to or from U.S. Clearing Members and their clients; returned any collateral, margin, or other property of U.S. Clearing Members and their clients; and provided prompt written notice to the Commission when these conditions are satisfied.

- If LCH SA is no longer required to file Non-Registrable Business Rule Changes because LCH SA no longer has U.S. Clearing Members in the Non-Registrable Business and has otherwise met the above-described conditions, LCH SA may not again onboard U.S. Clearing Members to the Non-Registrable Business without first receiving approval from the Commission.

- Finally, in connection with the statutory and rule provisions discussed throughout the Application from which exemptive relief is requested, LCH SA represents that, as a condition of such relief, LCH SA shall continue to implement policies and procedures designed to ensure compliance with the terms and conditions described in the Application, and to conduct periodic internal risk-based reviews related to its compliance program.³⁵

The Request for Exemptive Relief does not change the rule filing obligations of CDSClear or the Non-U.S.

Business under the Current Exemptive Relief.³⁶ LCH SA must continue to file proposed rule changes pursuant to section 19(b) of the Act³⁷ and Rule 19b-4³⁸ thereunder for CDSClear.³⁹ LCH SA is still exempt from filing proposed rule changes that primarily affect its clearing operations with respect to its Non-U.S. Business, including DigitalAssetClear and any future business unit that LCH SA operates entirely outside the U.S. and that does not have any U.S. persons as Clearing Members, and do not significantly affect any CDSClear operations or any rights or obligations of LCH SA with respect to the CDSClear services or persons using such services, subject to the conditions set out in the Current Exemptive Relief.⁴⁰

The Commission's oversight of LCH SA extends to LCH SA as a whole and is entity-based, rather than product-based.⁴¹ Absent exemptive relief, LCH SA is required to file all proposed rule changes with the Commission, including those that relate to its Non-Registrable Business. Moreover, absent exemptive relief, LCH SA is required to file its proposed rule changes pursuant to section 19(b)(2)⁴² or 19(b)(3)(A)⁴³ of the Act, depending on the content and effect of the proposed rule change. Proposed rule changes filed under section 19(b)(3)(A)⁴⁴ of the Act take effect upon filing, while proposed rule changes filed under section 19(b)(2)⁴⁵ must be approved by the Commission before they take effect.

III. Discussion

Under section 36 of the Exchange Act, the Commission "may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."⁴⁶ The Commission granted LCH SA's Current Exemptive Relief, finding that it was necessary or appropriate in the public interest and consistent with the protection of investors. The Commission determined

²⁷ Notice, 91 FR at 24617–18 n.20; Application, at 2 n.7.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 15 U.S.C. 78s(b)(3)(a).

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ As part of LCH SA's Request for Exemptive Relief, Non-Registrable Business Rule Changes would become effective under Rule 19b-4(f)(6) earlier than 30 days after the date of the filing, but not sooner than the date of filing, and LCH SA may file Non-Registrable Business Rule Changes even if LCH SA has not given 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 the proposed rule change. Notice, 91 FR at 24618 n.23.

³² 15 U.S.C. 78s(b)(2).

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ Notice, 91 FR at 24618.

³⁵ Notice, 91 FR at 24618.

³⁶ Notice, 91 FR at 24618.

³⁷ 15 U.S.C. 78s(b).

³⁸ 17 CFR 240.19b-4.

³⁹ 17 CFR 240.19b-4.

⁴⁰ Notice, 91 FR at 24618; Order, 82 FR at 1410 n.188.

⁴¹ Order, 82 FR at 1411, n.195.

⁴² 15 U.S.C. 78s(b)(2).

⁴³ 15 U.S.C. 78s(b)(3)(a).

⁴⁴ 15 U.S.C. 78s(b)(3)(a).

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ 15 U.S.C. 78mm(a)(1).

that requiring LCH SA to file proposed rule changes with respect to the Non-U.S. Business would not advance the Commission's regulatory interest in overseeing registered clearing agencies and granting the request for exemption would not compromise the Commission's oversight responsibilities over registered clearing agencies on an entity-wide basis.⁴⁷ Similarly, the Commission finds that the conditional exemptive relief granted herein is necessary or appropriate in the public interest and consistent with the protection of investors because (i) requiring LCH SA to file Non-Registrable Business Rule Changes pursuant to section 19(b)(2) of the Act does not advance the Commission's regulatory interest in overseeing registered clearing agencies, and (ii) allowing LCH SA to file Non-Registrable Business Rule Changes solely pursuant to section 19(b)(3)(A) of the Act,⁴⁸ and paragraph (f)(6) of Rule 19b-4 thereunder,⁴⁹ does not compromise the Commission's oversight responsibilities over registered clearing agencies on an entity-wide basis.

First, requiring LCH SA to file Non-Registrable Business Rule Changes pursuant to section 19(b)(2) of the Act does not advance the Commission's regulatory interest in overseeing registered clearing agencies. Although LCH SA's Non-Registrable Business will offer clearing services for securities, the Commission has a reduced regulatory interest in the Non-Registrable Business. In the Non-Registrable Business, LCH SA clears repurchase and cash transactions on Euro-denominated government and supranational debts. As noted above, the Non-Registrable Business does not include any clearance and settlement services pertaining to any purchase or sale transaction in U.S. Treasury securities or repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities; any other transaction involving U.S. Treasury securities; or any clearance and settlement services pertaining to any securities meeting the definition of "government securities" in section 3(a)(42) of the Act.⁵⁰ Thus, the Commission has a reduced regulatory interest in these clearing services.

Moreover, although LCH SA's Non-Registrable Business will include U.S. Clearing Members, those Clearing Members will have opportunities to review and comment on Non-

Registrable Business Rule Changes. LCH SA will file all Non-Registrable Business Rule Changes under section 19(b)(3)(A) of the Act⁵¹ and paragraph (f)(6) of Rule 19b-4 thereunder.⁵² Like other proposed rule changes filed under section 19(b)(3)(A) of the Act,⁵³ the Commission will publish notice of, and request public comment on, the Non-Registrable Business Rule Changes. The public, including U.S. Clearing Members, will be able to review and comment on the Non-Registrable Business Rule Changes, affording them an opportunity to consider and provide feedback on such changes. 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, the Commission summarily may temporarily suspend a Non-Registrable Business Proposed Rule Change and institute proceedings with respect to such change, pursuant to section 19(b)(3)(C) of the Act.⁵⁴ Public notice and comment, as well as the Commission's ability to suspend and institute proceedings, provide a fair process to U.S. Clearing Members to consider, provide feedback, and potentially challenge the Non-Registrable Business Rule Changes.

Second, granting the conditional exemption does not compromise the Commission's oversight responsibilities over registered clearing agencies on an entity-wide basis. As stated above, the Commission's oversight of LCH SA extends to LCH SA as a whole and is entity-based, rather than product-based.⁵⁵ Granting the relief will not affect CDSClear and the Non-U.S. Business, as LCH SA will continue to file proposed rule changes with respect to CDSClear and comply with the existing conditions of the Current Exemptive Relief as they relate to the Non-U.S. Business. Thus, LCH SA must file (i) proposed rule changes with respect to CDSClear, (ii) proposed rule changes that do not primarily affect LCH SA's non-CDSClear business lines, and (iii) proposed rule changes with respect to its Non-U.S. Business that significantly affect any CDSClear operations or any rights or obligations of LCH SA with respect to the CDSClear services or persons using the CDSClear services. LCH SA must also continue to provide notice to Commission staff of its Non-U.S. Business Rule Changes within three business days of such rules being

duly approved by LCH SA's national competent authorities.⁵⁶ Similarly, Non-Registrable Business Rule Changes must not significantly affect any CDSClear operations or any rights or obligations of LCH SA with respect to the CDSClear services or persons using the CDSClear services. The Commission's oversight responsibilities are also not compromised by granting the conditional exemption because, as noted above, the Commission could still review, potentially suspend, and potentially disapprove Non-Registrable Business Rule Changes filed under section 19(b)(3)(A) of the Exchange Act.⁵⁷

The conditions of the exemptive relief further prevent the request from compromising the Commission's oversight responsibilities. Specifically, the exemptive relief is conditioned on LCH SA's obligation to file the Non-Registrable Business Rule Changes beginning on the date that the first U.S. Clearing Member is admitted as a member of the Non-Registrable Business and LCH SA providing prompt written notice to the Commission when the Non-Registrable Business onboards U.S. Clearing Members or ceases to have U.S. Clearing Members. It also is conditioned on LCH SA's obligation to file Non-Registrable Business Rule Changes ending only when it has closed all transactions and positions involving U.S. Clearing Members and their clients, completed final settlement of amounts owed to or from U.S. Clearing Members and their clients, returned any collateral or other property of U.S. Clearing Members and their clients, and provided prompt written notice when it satisfies the conditions necessary to stop filing Non-Registrable Business Rule Changes. If LCH SA is no longer required to file Non-Registrable Business Rule Changes because LCH SA no longer has U.S. Clearing Members in the Non-Registrable Business and has otherwise met the required conditions, LCH SA may not again onboard U.S. Clearing Members to the Non-Registrable Business without first receiving approval from the Commission.

These conditions ensure that the Commission is aware of when LCH SA begins filing Non-Registrable Business Rule Changes under the exemptive relief. Further, the conditions ensure that the Commission is aware of when LCH SA ceases filing Non-Registrable Business Rule Changes under the exemptive relief and resumes treating its proposed changes as if they are Non-

⁵¹ 15 U.S.C. 78s(b)(3)(A).

⁵² 17 CFR 240.19b-4(f)(6).

⁵³ 15 U.S.C. 78s(b)(3)(A).

⁵⁴ 15 U.S.C. 78s(b)(3)(C).

⁵⁵ Order, 82 FR at 1411, n.195.

⁵⁶ Order, 82 FR at 1414.

⁵⁷ 15 U.S.C. 78s(b)(3)(A).

⁴⁷ Order, 82 FR at 1411-12.

⁴⁸ 15 U.S.C. 78s(b)(3)(a).

⁴⁹ 17 CFR 240.19b-4(f)(6).

⁵⁰ 15 U.S.C. 78c(a)(42).

U.S. Business Rule Changes under the Current Exemptive Relief (and therefore neither filing its Non-U.S. Business Rule Changes under section 19(b)(2)⁵⁸ nor 19(b)(3)(A)⁵⁹ of the Exchange Act). By making clear which relief LCH SA is following, these conditions allow the Commission to maintain the appropriate level of oversight, as described in the Current Exemptive Relief and the Request for Exemptive Relief.

Additionally, the conditions ending LCH SA's obligation to file Non-Registrable Business Rule Changes only when it has closed all transactions and positions involving U.S. Clearing Members and their clients, completed final settlement of amounts owed to or from U.S. Clearing Members and their clients, and returned any collateral or other property of U.S. Clearing Members and their clients ensure that LCH SA has satisfied all obligations with respect to its U.S. Clearing Members before it treats the Non-Registrable Business as a Non-U.S. Business. The conditions requiring that LCH SA continue to implement policies and procedures designed to ensure compliance with the terms and conditions described in the Request for Exemptive Relief and conduct periodic, internal risk-based reviews related to its compliance program further bolster LCH SA's oversight of its interactions with U.S. Clearing Members.

Based on the above, granting LCH SA conditional exemptive relief from the requirement to file Non-Registrable Business Rule Changes under section 19(b)(2) of the Act⁶⁰ and Rule 19b-4 thereunder⁶¹ is necessary or appropriate in the public interest, and consistent with the protection of investors.

IV. Conclusion

It is therefore ordered, pursuant to section 36 of the Act, based on the representations and facts presented in LCH SA's Request for Exemptive Relief, that LCH SA is exempt from the requirement to file Non-Registrable Business Rule Changes under section 19(b)(2) of the Act and Rule 19b-4 thereunder, subject to the following conditions:

(1) A Non-Registrable Business Rule Change is a proposed rule change that;

(a) primarily affects LCH SA's clearing operations with respect to the Non-Registrable Business; and

(b) does not significantly affect any CDS/Clear operations or any rights or

obligations of LCH SA with respect to the CDS/Clear services or persons using the CDS/Clear services.

(2) LCH SA's Non-Registrable Business consists of its RepoClear service, which offers clearing services for transactions in repurchase and cash transactions on Euro-denominated government and supranational debts and does not include any services pertaining to any purchase or sale transaction in U.S. Treasury securities or repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities; any other transaction involving U.S. Treasury securities; or any clearance and settlement services pertaining to any securities meeting the definition of "government securities" in section 3(a)(42) of the Act.⁶²

(3) LCH SA must file with the Commission a Non-Registrable Business Rule Change pursuant to section 19(b)(3)(A) of the Act⁶³ and paragraph (f)(6) of Rule 19b-4 thereunder,⁶⁴ except that a Non-Registrable Business Rule Change,

(a) may become effective under Rule 19b-4(f)(6)⁶⁵ earlier than 30 days after the date of the filing, but not sooner than the date of filing; and

(b) may be filed even if LCH SA has not given 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 the proposed rule change.

(4) LCH SA's obligation to file with the Commission the Non-Registrable Business Rule Changes begins on the effective date that the first U.S. Clearing Member is admitted as a member of the Non-Registrable Business.

(5) LCH SA must provide prompt written notice to the Commission in the event that the Non-Registrable Business,

(a) onboards U.S. Clearing Members, and

(b) ceases to have U.S. Clearing Members.

(6) In the event the Non-Registrable Business ceases to have U.S. Clearing Members, LCH SA must continue to file Non-Registrable Business Rule Changes, and otherwise comply with the conditions described herein until LCH SA has, with respect to the Non-Registrable Business,

(a) closed all transactions and positions involving U.S. Clearing Members and their clients;

(b) completed final settlement of amounts owed to or from U.S. Clearing Members and their clients;

(c) returned any collateral, margin, or other property of U.S. Clearing Members and their clients; and

(d) provided prompt written notice to the Commission when these conditions are satisfied.

(7) If LCH SA is no longer required to file Non-Registrable Business Rule Changes because LCH SA no longer has U.S. Clearing Members in the Non-Registrable Business and has otherwise met the above-described conditions, LCH SA may not again onboard U.S. Clearing Members to the Non-Registrable Business without first receiving approval from the Commission.

(8) If LCH SA is no longer required to file Non-Registrable Business Rule Changes because LCH SA no longer has U.S. Clearing Members in the Non-Registrable Business and has otherwise met the above-described conditions, LCH SA may, from that point forward, treat all Non-Registrable Business Rule Changes as Non-U.S. Business Rule Changes under the Current Exemptive Relief.

(9) LCH SA must continue to comply with the terms of the Current Exemptive Relief in respect of the Non-U.S. Business, which shall include DigitalAssetClear and any future business unit that LCH SA operates entirely outside the U.S. and that does not have any U.S. Clearing Members, including by, among other things, providing notice to Commission Staff of its Non-U.S. Business Rule Changes within three (3) business days of such rules taking effect pursuant to the requirements of the European Market Infrastructure Regulation or LCH SA's national competent authorities.

(10) LCH SA shall implement policies and procedures designed to ensure compliance with the terms and conditions described herein and shall conduct periodic internal risk-based reviews of its program designed to ensure compliance with the terms and conditions described herein.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

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⁵⁸ 15 U.S.C. 78s(b)(2).

⁵⁹ 15 U.S.C. 78s(b)(3)(A).

⁶⁰ 15 U.S.C. 78s(b)(2).

⁶¹ 17 CFR 240.19b-4.

⁶² 15 U.S.C. 78c(a)(42).

⁶³ 15 U.S.C. 78s(b)(3)(A).

⁶⁴ 17 CFR 240.19b-4(f)(6).

⁶⁵ 17 CFR 240.19b-4(f)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106349; File No. 4–757]

Joint Industry Plan; Order Approving the Third Amendment to the National Market System Plan Regarding Consolidated Equity Market Data To Revise the Revenue Allocation Formula

September 14, 2026.

I. Introduction

On June 2, 2026, the Operating Committee¹ of the Limited Liability Company Agreement of the CT Plan LLC (“CT Plan”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to section 11A of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608 of Regulation National Market System (“Regulation NMS”) thereunder,³ a proposal⁴ to revise the allocation of net revenues under the CT Plan among Members (“Amendment”).⁵ The Amendment, which represents the Third Amendment to the CT Plan, was published for comment in the **Federal Register** on June 17, 2026.⁶ The Commission received comment on the Amendment and a response from the Operating Committee.⁷ This order approves the Amendment.

II. Background

Exhibit D to the CT Plan provides for the allocation of net revenues received under the CT Plan among the Members. Generally, revenue is allocated through a two-step process that involves first, allocating revenue to individual securities and second, allocating such

revenue to Members based on their respective quoting and trading activity in such individual securities.⁸ Under the CT Plan, the Operating Committee has “full and complete discretion,” subject to any required approval by its Members⁹ and the requirements of Rule 608 of Regulation NMS,¹⁰ to, among other things, take all such actions as it deems necessary or appropriate to accomplish the purposes of the CT Plan, including “designing a fair and reasonable revenue allocation formula for allocating plan revenues” and overseeing, reviewing, and revising that formula as needed,¹¹ as well as proposing amendments to the CT Plan.¹² The Amendment would impose a limit, or “cap,” on the ratio of revenue distributed to each individual Member that is attributable to its quoting activity compared to revenue such Member receives for trading activity.

1. Purpose of Amendment

According to the Operating Committee, Members have observed a distinct pattern on some markets of quoting and trading activity, characterized by frequent or continuous quoting at the national best bid and offer (“NBBO”)—often in size and in high-priced securities—accompanied by relatively little increase in the level of trading activity on those venues.¹³ The Operating Committee stated that this resulted in extreme distortions in how quote-based revenues were allocated among the Members, compared to trade-based revenues.¹⁴ For example, according to the Operating Committee, LTSE’s quote-to-trade ratio for 2024 was approximately 107:1 on Tape A, 70:1 on Tape B, and 88:1 on Tape C.¹⁵ In addition, according to the Operating Committee, NYSE Chicago, Inc. (now NYSE Texas) also exhibited quote-to-trade ratios significantly higher than historical norms, often exceeding 20:1, in Tapes A and C beginning in 2021 and ending in 2024.¹⁶ By comparison, according to the Operating Committee, from 2018 through the present, Members typically have maintained quote-to-trade ratios substantially less than 5:1 and allocations in excess of that

ratio have historically occurred only under exceptional circumstances, such as the temporary distortions in quoting and trading related to the entry of new exchanges with low absolute trading and quoting volume.¹⁷ The Operating Committee stated that the observed quoting activity undermined the Commission’s objectives in adopting the revenue allocation formula in Regulation NMS and warranted a change to the CT Plan’s revenue allocation formula to ensure those objectives are met.¹⁸ According to the Operating Committee, when quoting activity ceases to bear a meaningful relationship to trading, it becomes “less useful for price discovery and more likely to be associated with activity that distorts market data[.]”¹⁹

2. Description of Proposed Amendment

In the Amendment, the Operating Committee proposed to implement a ratio cap on the quote-to-trade revenue ratio. Specifically, under the Amendment, the amount of quote-related revenue received by a Member would be adjusted if it exceeded its allocated trading revenue by a ratio of more than five-to-one.²⁰ The Amendment would apply the ratio cap to each periodic distribution of CT Plan revenue to Members. As proposed, the amount of quoting revenue that exceeds the five-to-one ratio that would be otherwise payable to the Member would be redistributed to all other Members, including FINRA (to which the ratio cap does not apply).²¹ The allocation of the excess to such other Members would be based on each Member’s share of distributable quote revenue in relation to all quote revenue distributable to all such other Members. Furthermore, if the redistribution of revenue would cause a Member to exceed the 5:1 ratio, the excess revenue above the ratio would be

¹ See CT Plan Art. IV, sec. 4.1.

² 15 U.S.C. 78k–1(a)(3).

³ 17 CFR 242.608.

⁴ See Letter from Jeff Kimsey, CT Plan Operating Committee Chair, dated June 1, 2026. Pursuant to section 4.3(b) of the CT Plan, certain actions of the Operating Committee require an affirmative vote of not less than two-thirds of all votes eligible to vote on a matter. Long Term Stock Exchange, Inc. (“LTSE”) did not join in the submission of the proposal. See Securities Exchange Act Release No. 105680 (June 12, 2026), 91 FR 36633 at n.4 (June 17, 2026) (“Notice”).

⁵ The Members are: 24X National Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, LTSE, MEMX LLC, MIAX PEARL, LLC, Nasdaq Texas, LLC, Nasdaq ISE, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., NYSE Texas, Inc. (“NYSE Texas”), and Texas Stock Exchange LLC.

⁶ See Notice, *supra* note 4.

⁷ Comments received can be found on the Commission’s website at: <https://www.sec.gov/comments/4-757/4-757.htm>.

⁸ See Exhibit D of the CT Plan.

⁹ See *supra* note 4.

¹⁰ 17 CFR 242.608.

¹¹ See section 4.1(a)(vi) of the CT Plan.

¹² See section 4.1(a)(i) of the CT Plan.

¹³ See Notice, *supra* note 4 at 36634. The Operating Committee also stated that “much of the quoting activity responsible for high quote-to-trade ratios has involved quoting in relatively inactively traded securities.” See Notice, *supra* note 4 at 36634 n.10.

¹⁴ See Notice, *supra* note 4 at 36634.

¹⁵ See Notice, *supra* note 4 at 36634.

¹⁶ See Notice, *supra* note 4 at 36634.

¹⁷ See Notice, *supra* note 4 at 36634.

¹⁸ See Notice, *supra* note 4 at 36634 (stating that “[i]n revising the formula, the Commission determined that it should provide some allocation of revenue for quotations that contribute meaningfully to the consolidated data stream”); see also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 at 37561–37566 (June 29, 2005) (“Regulation NMS Adopting Release”) (discussing the new revenue allocation formula).

¹⁹ See Notice, *supra* note 4 at 36634.

²⁰ See proposed section (a)(ii) of Exhibit D of the CT Plan and Notice, *supra* note 4 at 36635. According to the Operating Committee, the 5:1 threshold is based on an analysis of historical data from 2018 to 2024. The Operating Committee stated that during that time, excluding the 25 out of 318 distributions when the ratio cap would have been breached by various exchanges, the average quote-to-trade ratio would have been as follows: Tape A: 1.79, Tape B: 1.86; and Tape C 1.82. See Notice, *supra* note 4 at 36635.

²¹ See proposed section (a)(ii) of Exhibit D of the CT Plan and Notice, *supra* note 4 at 36635.

further redistributed in the same way to other Members that have not exceed the ratio cap.²² The Amendment also included a de minimis exception for Members with very low total quoting and trading activity, to recognize that such entities may temporarily exceed the 5:1 ratio due to statistical volatility without materially affecting revenue distribution.²³ As proposed, the de minimis exception would not apply the ratio cap where a Member's total payment based on quoting activity does not exceed \$50,000 during a calendar year.²⁴

III. Discussion and Commission Findings

After careful consideration, the Commission is approving the Amendment. Rule 608 of Regulation NMS authorizes two or more self-regulatory organizations, acting jointly, to file with the Commission a proposed amendment to an effective national market system plan, and Rule 608 provides that the Commission shall approve an amendment to an effective national market system plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.²⁵ For the reasons discussed below, the Commission concludes that the Amendment is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Exchange Act consistent with Rule 608(b)(2) of Regulation NMS.²⁶

The Commission received comment letters on the Amendment. While one commenter “generally agree[s] with the Third Amendment as a corrective measure,” the commenter stated that “it does not go far enough and does not remedy the structural deficiencies in the current [revenue allocation] formula,”²⁷ which it stated contributes to excessive exchange proliferation by “permitting exchanges to earn meaningful market data revenues without making commensurate contributions to trading activity, liquidity, or price discovery[.]”²⁸ According to this commenter, the Amendment only addresses a “narrow set of outlier outcomes” and would continue to “systematically award quote revenue at nearly double the rate of trade revenue even for exchanges operating well within the proposed cap.”²⁹ Instead, the commenter made several recommendations, including (i) reducing overall CT Plan costs to ensure the CT Plan recovers “only those costs reasonably necessary to administer and operate” the CT Plan,³⁰ (ii) increasing the weighting assigned to trade executions since executions “provide the strongest evidence of price discovery[.]”³¹ (iii) limiting quote credits, if the Commission determines that quotations should continue to receive credit under the revenue allocation formula, to NBBO setting quotations that result in executions to reward quotations that both introduce new pricing information to the marketplace and demonstrate that information's value through actual trading activity,³² and (iv) establishing a minimum participation threshold as a prerequisite to sharing revenues.³³ One

added to the Plans by the Allocation Amendment can be adjusted in the future pursuant to the normal process of Commission-approved amendments.” See Regulation NMS Adopting Release, *supra* note 18 at 37561–62.

²⁷ See Letter from Joanna Mallers, Secretary, PTG, dated July 8, 2026 (“PTG Letter”) at 1.

²⁸ PTG Letter at 1–2; *see also* Letter from Katie Kolchin, CFA, Managing Director, Head of Equity & Options Market Structure and Gerald O'Hara, Vice President & Assistant General Counsel, The Securities Industry and Financial Markets Association, dated July 22, 2026 (“SIFMA Letter”) at 2.

²⁹ PTG Letter at 2; *see also* SIFMA Letter at 1.

³⁰ PTG Letter at 3; *see also* SIFMA Letter at 4–5.

³¹ PTG Letter at 3; *see also* SIFMA Letter at 3–4. According to one commenter, the current formula fails to distinguish between “quotations that establish the NBBO and facilitate trading, quotations that join an existing NBBO, and quotations that never result in executions at all.” PTG Letter at 2.

³² PTG Letter at 3–4.

³³ PTG Letter at 4. *See also* SIFMA Letter at 1 (stating that the commenter plans to address, among other things, the revenue allocation formula “more

commenter stated that “[m]aking more fundamental changes to the formula requires a thoughtful approach because it will impact exchange and market participant behavior.”³⁴ This commenter also provided data on 2025 and first quarter of 2026 revenue allocations and showed that three exchanges in 2025 and two exchanges in the first quarter of 2026 would have been impacted by the proposed quote-to-trade ratio of 5:1.³⁵

Another commenter stated that the Commission should disapprove the Amendment.³⁶ The commenter stated that the current revenue allocation formula “reflects Commission-approved goals designed to remunerate contributions to price discovery”³⁷ and that there is no data that shows the existence of any deficiencies.³⁸ The commenter stated that the Amendment is “unsupported and controversial.”³⁹ The commenter also stated that the current revenue allocation formula has been in place for over 20 years and rewards exchanges that contribute to price discovery by displaying high-quality quotations at the NBBO.⁴⁰ The commenter further stated that there are other legitimate reasons as to why quoting activity may not have a

broadly in our response to the Rule 611 Proposal”) and Letter from William R. Harts, Chief Executive Officer, LTSE, dated July 8, 2026, at 6 (“LTSE Letter”) (stating that if the Commission decides to revisit the revenue allocation formula, it should conduct a comprehensive re-examination). The Commission recently proposed to rescind Rule 611 of Regulation NMS and stated in that release that “[s]ome have criticized the formula's quoting component, which they argued has contributed to the creation of new exchanges and subsidizes exchanges that quote but rarely trade, thus providing minimal value to market participants.” See Notice, *supra* note 4 at 36636. In this regard, the Commission requested comment on whether, and to what extent, revisions should be made to the revenue allocation formula. See Notice, *supra* note 4 at 36636. The comment period for the proposal to rescind Rule 611 was open until August 17, 2026. See Securities Exchange Release No. 105655 (June 11, 2026), 91 FR 36656 (June 17, 2026) (“Rule 611 Proposal”). For the reasons discussed herein, the Commission is approving the Amendment.

However, the Commission will continue to consider all comments on whether, and to what extent, additional revisions should be made to the revenue allocation formula. Moreover, the Operating Committee has committed to overseeing a broader review of the revenue allocation formula. See Letter from Jeff Kimsey, CT Plan Operating Committee Chair, dated August 23, 2026 (“Response Letter”) at 3.

³⁴ SIFMA Letter at 1.

³⁵ SIFMA Letter at 2–3.

³⁶ LTSE Letter at 2. This commenter submitted a subsequent comment letter to “supplement the record” by attaching the comment letter it submitted on the Rule 611 Proposal. See Letter from Maliz Beams, Interim Chief Executive Officer, LTSE, dated August 28, 2026.

³⁷ LTSE Letter at 1.

³⁸ LTSE Letter at 1–2, 6.

³⁹ LTSE Letter at 2.

⁴⁰ LTSE Letter at 6.

²² See proposed section (a)(ii) of Exhibit D of the CT Plan and Notice, *supra* note 4 at 36635.

²³ See proposed section (a)(ii) of Exhibit D of the CT Plan and Notice, *supra* note 4 at 36635. The Operating Committee stated that in 3 of the 25 times that the proposed ratio cap would have been exceeded between 2018 and 2024, one exchange that exceeded the ratio cap would have been eligible for receiving quote revenue under the de minimis exception. See Notice, *supra* note 4 at 36635.

²⁴ See proposed section (a)(ii) of Exhibit D of the CT Plan and Notice, *supra* note 4 at 36635. According to the Operating Committee, the de minimis exception was selected based on reviewing data for new exchanges and ensuring that those new exchanges would not be affected by the ratio cap during their launch. See Notice, *supra* note 4 at 36635.

²⁵ See 17 CFR 242.608(a)(1) and 17 CFR 242.608(b)(2).

²⁶ See 17 CFR 242.608(b)(2). The Commission stated when it adopted Regulation NMS and the revenue allocation formula that “the language

“meaningful relationship” to trading, including other venues quickly matching the NBBO; smart order routers prioritizing exchanges with historical liquidity; routers prioritizing venues with the largest displayed size; firms seeking to lower their costs by reaching certain exchange volume tiers; and competition from the over-the-counter market and other exchanges.⁴¹ The commenter stated that the Amendment would create distorted incentives and potentially anti-competitive outcomes because exchanges with low quote-to-trade ratios would be less incentivized to encourage aggressive quoting that contributes to price discovery.⁴²

In response to the foregoing, the Operating Committee stated that the Amendment “represents a measured and beneficial refinement to the existing allocation framework, directed at a specific issue[.]”⁴³ According to the Operating Committee, the Amendment addresses a discrete concern “that in certain circumstances, quote activity may generate revenue allocations that are disproportionate to trading activity and disconnected from meaningful market contribution.”⁴⁴ Accordingly, the Operating Committee stated that future consideration of broader reforms to the allocation formula should not delay approval of the Amendment, which is an “incremental, practical correction to a discrete problem.”⁴⁵ Further, approval of the Amendment would “not prevent the SEC or the Operating Committee from reviewing the remaining aspects of the formula at a future date.”⁴⁶ The Operating Committee represented that the it remained “committed to overseeing a broader review of the . . . formula, especially in light of broader market reforms being considered by the SEC.”⁴⁷

As to one commenter stating that there may be other legitimate reasons as to why quoting activity may not have a meaningful relationship to trading,⁴⁸ the Operating Committee stated that this commenter had “not presented data demonstrating that an exchange subject to the cap provides the type of market contribution” suggested by the commenter.⁴⁹ Further, the Operating Committee stated that “Members typically have maintained quote-to-trade ratios substantially less than 5:1,

and allocations in excess of that ratio have historically occurred only under exceptional circumstances,”⁵⁰ such as the entry of new exchanges, and that the commenter had “not provided data demonstrating that the temporary distortions are associated with what it considers to be meaningful quote-only participation.”⁵¹ The Operating Committee also stated that the Amendment “continues to recognize quote-based contribution by preserving quote-related allocation. It simply limits the extent to which quote-based allocation may outpace trade-based allocation.”⁵²

As described above, the Operating Committee proposed a discrete change to how payments would be allocated to Members under the revenue allocation formula, which formula remains unchanged, to address quoting activities that are outside of historic quote-to-trade ratios that the Operating Committee estimates as substantially less than 5:1.⁵³ The Operating Committee provided data to support the Amendment that showed quote-to-trade ratios on certain exchanges that were outside of historical norms, in one case in excess of 100:1.⁵⁴ While one commenter stated that there may have been legitimate reasons for that elevated quoting activity,⁵⁵ it is not clear that these reasons explain the prolonged and recurring quoting activity that significantly exceeded other Members’ historical norms.⁵⁶ Further, there is no evidence, at this time, to suggest that the Amendment would result in exchanges being less incentivized to display aggressive quotes. However, as described above, the Commission and the Operating Committee will continue to monitor any issues that may arise and consider whether and to what extent additional revisions should be made to the revenue allocation formula.⁵⁷

The Commission finds that the Amendment is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets because it is a narrowly designed revision to payments pursuant to the revenue allocation formula, while including a de minimis exception applied to Members with very low total quoting and trading activity.⁵⁸ Specifically, the Amendment is narrow

in scope, as it is designed to revise the payment of quotation revenue to Members only in specific occurrences of quoting activity that are outside of historical norms. Providing a de minimis exception also recognizes that Members may temporarily exceed the 5:1 ratio due to statistical volatility without materially affecting revenue distribution, such as can happen to new exchanges during their launch. Moreover, the exclusion of FINRA from the 5:1 ratio is appropriate given the unique nature of FINRA’s trade reporting facilities.⁵⁹ Consequently, the Commission finds that the Operating Committee’s adjustments to payments under the revenue allocation formula to address these quoting activities are reasonable and fulfill its obligations of “designing a fair and reasonable revenue allocation formula . . . and overseeing, reviewing and revising that formula as needed.”⁶⁰

IV. Conclusion

For the reasons discussed above, the Commission finds that the Amendment is consistent with the requirements of section 11A of the Exchange Act,⁶¹ and Rule 608 thereunder.⁶² Specifically, the Commission finds that the Amendment is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.

It is therefore ordered, that pursuant to section 11A of the Exchange Act,⁶³ and Rule 608(b)(2) thereunder,⁶⁴ the Amendment (File No. 4–757) is approved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–19043 Filed 9–16–26; 8:45 am]

BILLING CODE 8011–01–P

⁵⁹ See Notice, *supra* note 4. Pursuant to FINRA Rule 6110, FINRA members are required to report transactions in NMS stocks effected “otherwise than on or through a national securities exchange to FINRA.” See FINRA Rule 6110(a). FINRA also provides an Alternative Display Facility (“ADF”) that provides members with a facility for the display of quotations, the reporting of trades, and the comparisons of trades. Currently, there are no active quoting ADF members. See <https://www.finra.org/filing-reporting/alternative-display-facility-adf>.

⁶⁰ See CT Plan, Art. IV, section 4.1(a)(vi).

⁶¹ 15 U.S.C. 78k–1.

⁶² 17 CFR 242.608.

⁶³ 15 U.S.C. 78k–1.

⁶⁴ 17 CFR 242.608(b)(2).

⁴¹ LTSE Letter at 4–5.

⁴² LTSE Letter at 6.

⁴³ Response Letter at 1.

⁴⁴ Response Letter at 1.

⁴⁵ Response Letter at 2–3.

⁴⁶ Response Letter at 1.

⁴⁷ Response Letter at 3.

⁴⁸ See *supra* note 41 and accompanying text.

⁴⁹ Response Letter at 2.

⁵⁰ Response Letter at 2.

⁵¹ Response Letter at 2.

⁵² Response Letter at 2.

⁵³ See *supra* notes 15–17 and accompanying text.

⁵⁴ See Notice, *supra* note 4 at 36634; see also SIFMA Letter at 3.

⁵⁵ See *supra* note 41 and accompanying text.

⁵⁶ See Notice, *supra* note 4 at 36634.

⁵⁷ See *supra* note 33.

⁵⁸ See *supra* notes 23 and 24.

SECURITIES AND EXCHANGE COMMISSION**[Release No. 34–106348; File No. SR–NYSEAMER–2026–17]****Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Sections 1003 and 1009 of the NYSE American Company Guide**

September 14, 2026.

On March 6, 2026, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Sections 1003 and 1009 of the NYSE American Company Guide to establish that an issuer must maintain a certain market capitalization in order to remain listed on the Exchange. The proposed rule change was published for comment in the *Federal Register* on March 20, 2026.³

On April 29, 2026, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to take action on the proposed rule change.⁵ On June 2, 2026, the Commission initiated proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a

longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the *Federal Register* on March 20, 2026.⁹ The 180th day after publication of the proposed rule change is September 16, 2026. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein, as well as the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates November 15, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEAMER–2026–17).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,*Deputy Secretary.*

[FR Doc. 2026–19039 Filed 9–16–26; 8:45 am]

BILLING CODE 8011–01–P**SMALL BUSINESS ADMINISTRATION****[Disaster Declaration #21869 and #21870; NEVADA Disaster Number NV–20008]****Administrative Declaration of a Disaster for the State of Nevada****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of Nevada dated September 11, 2026.

Incident: Bug and Hawk Fires.**DATES:** Issued on September 11, 2026.*Incident Period:* August 8, 2026 through September 9, 2026.*Physical Loan Application Deadline Date:* November 10, 2026.*Economic Injury (EIDL) Loan Application Deadline Date:* June 11, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Shaquille Lewis, Office of Disaster Recovery and Resilience, U.S. Small

Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator’s disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email a disastercustomerservice@sba.gov or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Washoe.*Contiguous Counties:*

Nevada: Carson City, Churchill, Humboldt, Lyon, Pershing, Storey.

California: Lassen, Modoc, Nevada, Placer, Sierra.

Oregon: Harney, Lake.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 218695 and for economic injury is 218700.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2026–19030 Filed 9–16–26; 8:45 am]

BILLING CODE 8026–09–P¹ 15 U.S.C. 78s(b)(1).² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 105036 (Mar. 17, 2026), 91 FR 13645. Comments received on the proposed rule change are available at: <https://www.sec.gov/rules-regulations/public-comments/sr-nyseamer-2026-17>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 105334, 91 FR 24023 (May 4, 2026). The Commission designated June 18, 2026, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change. See *id.*

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 105597, 91 FR 34263 (June 5, 2026).

⁸ 15 U.S.C. 78s(b)(2).⁹ See *supra* note 3 and accompanying text.¹⁰ 15 U.S.C. 78s(b)(2).¹¹ 17 CFR 200.30–3(a)(57).

DEPARTMENT OF STATE

[Public Notice: 13116]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Dead Sea Scrolls: The Exhibition” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Dead Sea Scrolls: The Exhibition” at the Houston Museum of Natural Science, Houston, Texas, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

The action of the United States in this matter, and the immunity based on the application of the provisions of law involved, does not imply any view of the United States concerning the ownership of the exhibit objects.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Sherry C. Keneson-Hall,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–19078 Filed 9–16–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 13128]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Rembrandt’s Lions: Art and Exile in the Dutch Republic” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Rembrandt’s Lions: Art and Exile in the Dutch Republic” at The Morgan Library & Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Sherry C. Keneson-Hall,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–19081 Filed 9–16–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 13127]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Masterpieces of Printmaking: 1460—Now” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Masterpieces of Printmaking: 1460—Now” at the Bowers Museum, Santa Ana, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, D.C. 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Sherry C. Keneson-Hall,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–19093 Filed 9–16–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration**Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the Texas Department of Transportation (TxDOT), is issuing this notice to announce actions taken by TxDOT and other Federal agencies that are final agency actions. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA, on behalf of TxDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the highway projects listed below will be barred unless the claim is filed on or before February 16, 2027. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 419-8604; email: Patrick.Lee@txdot.gov. TxDOT's normal business hours are 8 a.m. to 5 p.m. (Central Standard Time), Monday through Friday, except State holidays.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated July 17, 2025, and executed by the FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws

under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.
4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and 1536], Marine Mammal Protection Act [16 U.S.C. 1361–1423h]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].
6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(ii)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].
7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
8. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].
9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 13112 Invasive Species.

The projects subject to this notice are:

1. South Lakeline Boulevard from Little Elm Trail to New Hope Drive, Williamson County, Texas. The project will reconstruct the existing shared use path from six feet wide to eight to ten feet wide. The project is 3.9 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on June 4, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; telephone: (512) 832-7000.

2. I-35 from 2.7 miles north of Uniroyal Interchange to 1.2 miles north of US 83 Interchange and US 83 from Los Botines Lane to one mile north of SH 255, Webb County, Texas. The proposed 9.4-mile-long project will widen I-35 to three main lanes in each direction, elevate the interstate over Union Pacific Railroad, convert frontage roads to one-way lanes, and rebuild the 1-35/US 83 interchange with elevated direct connector bridges. US 83 will be converted to a controlled access facility consisting of two main lanes in each direction and one-way frontage roads. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on June 18, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Laredo District Office at 1817 Bob Bullock Loop, Laredo, TX 78043; telephone: (956) 712-7495.

3. Nolana Avenue, from FM 2220 to FM 1926, Hidalgo County, Texas. The project will widen Nolana Avenue from a four-lane to a six-lane urban roadway. The reconstructed roadway will consist of six 12-foot-wide travel lanes, a 14-foot-wide concrete raised median, a six-foot-wide sidewalk on the south side,

and a 10-foot-wide shared-use path on the north side. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 13, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Pharr District Office at 600 W. Interstate 2, Pharr, Texas 78577; telephone: (956) 702-6101.

4. SH 302, from east of CR 313 to FM 2019, Winkler and Ector Counties, Texas. The project will widen SH 302 to a four-lane divided highway with two 12-foot travel lanes in each direction, a center median, four-foot inside and ten-foot outside shoulders, and median openings as needed. The project will also include turn lanes at various intersections throughout the project limits. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 22, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Odessa District Office at 3901 E Highway 80, Odessa, Texas 79761; telephone: (432) 498-4697.

5. FM 3248 (East Alton Gloor Blvd.) from I-69E to FM 1847, Cameron County, Texas. The project will widen the roadway to a six-lane divided highway with three 12-foot-wide travel lanes in each direction and 1.5-foot-wide outside shoulders. The project will replace the existing dedicated bike lanes and sidewalks with ten-foot-wide continuous shared-use paths in each direction. The length of the project is approximately 2.1 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 29, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Pharr District Office at 600 W Interstate 2, Pharr, Texas 78577; telephone: (956) 702-6101.

6. SH 47 at SH 21, Brazos County, Texas. The project will upgrade this intersection by reconstructing both SH 47 and SH 21 to four-lane roadways consistent of two 12-foot-wide main lanes in each direction, 10-foot-wide outside shoulders, 11-foot-wide inside shoulders and generally a 24-foot-wide

median between the main lanes. The project will also construct two-lane frontage roads in each direction on SH 47 and SH 21. The frontage roads will consist of two 12-foot-wide travel lanes in each direction with 2.5-foot-wide outside and inside curb and gutter areas. The project is approximately 2.9 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 29, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Bryan District Office at 2591 N Earl Rudder Freeway, Bryan, Texas 77803; telephone: (979) 778-9764.

7. Camino Real International Bridge Port Facilities and Access Improvements, from Camino Real Port of Entry Toll Booths to 0.5 mile east on South Monroe Street, Maverick County, Texas. This project will reconstruct and improve the port access roadways using grading, asphalt and concrete pavement, storm sewer infrastructure, signing and pavement markings, and roadway illumination within the existing right-of-way. This project will separate commercial and passenger vehicles entering the Port of Entry, providing additional queuing lanes for commercial vehicles exiting the international bridge prior to U.S. Customs inspection, and reconstruct the roadway leaving the custom inspection and connecting to Monroe St. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on August 31, 2026, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Laredo District Office at 1817 Bob Bullock Loop, Laredo, TX 78043; telephone: (956) 712-7402.

8. World Trade Bridge Expansion Project, from the World Trade Bridge Port of Entry to the International Boundary with Mexico, Webb County, Texas. The project will widen the existing bridge and construct a new adjacent bridge span generally parallel to the existing bridge across the Rio Grande. The project includes construction of an approximately 1,479-foot-long bridge span on the downriver side of the existing bridge to accommodate eight northbound commercial vehicle lanes and associated operational improvements. The project will also widen the existing bridge to

provide two additional southbound lanes. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final EA, the Finding of No Significant Impact (FONSI) issued on July 6, 2026, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Laredo District Office at 1817 Bob Bullock Loop Laredo, TX 78043; telephone: 956-712-7495.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1).)

Jack Bales,

Director Project Delivery, Federal Highway Administration.

[FR Doc. 2026-19085 Filed 9-16-26; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2026-1057]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 19, 2026.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 1057 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Melissa Maiefski, melissa.maiefski@dot.gov, (402) 326–7960, Office of Competitive Grants and Workforce Programs, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 21, 2026, at [91 FR 30024]. No comments were received.

Title: Type 3 Highway Bridge Replacement and Rehabilitation (BIT3) Competitive Grant Program.

Background: The Federal Highway Administration (FHWA) administers the Type 3 Highway Bridge Replacement and Rehabilitation (BIT3) Competitive Grant Program. It was established by Congress in the Consolidated Appropriations Act of 2026 (Pub. L. No. 119–75). The purpose of the BIT3 program is to fund the replacement or rehabilitation of county-owned bridges that are classified as Type 3 bridges by the United States Bureau of Reclamation (USBR) and cross a USBR-owned water conveyance structure. The program's goals include improving water delivery, improving bridge conditions, and enhancing the safety, efficiency, and reliability of the movement of people and goods over these specific structures.

The program provides competitive grants to eligible entities, specifically counties that own a Type 3 bridge crossing a USBR water conveyance structure. The Federal share for BIT3 projects is 100 percent, requiring no local match. The FHWA announced the availability of up to \$25 million for fiscal year 2026 grants to support these infrastructure improvements.

Respondents: The Notice of Funding Opportunity (NOFO) announcing up to \$25 million of Fiscal Year (FY) 2026 funding for BIT3 competitive grants will be available for eligible county governments on [grants.gov](https://www.grants.gov). FHWA is expecting roughly 50 applicants to apply for BIT3 grant funding.

Frequency: NOFOs and grant solicitations may be published annually by FHWA but are subject to the availability of funds in appropriations or any legislation signed into law authorizing funds.

Estimated Average Burden per Response: The burden hours vary from 0.5 to 4 hours depending on stage of the application per applicant.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 50 applications for the program, for an estimated total of 240 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 14, 2026.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2026–19028 Filed 9–16–26; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2025–02; Track Is Clear Determination During Shoving or Pushing Movements Across Highway-Rail Grade Crossings Equipped Only With Flashing Lights or Passive Warning Devices (Supplement)

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; Notice No. 2.

SUMMARY: On December 12, 2025, in response to a series of accidents involving operations requiring crew members to make “track is clear” determinations before shoving or pushing movements across highway-rail grade crossings (crossings) equipped only with flashing lights or passive warning devices, FRA published Safety Advisory 2025–02. Since publication, two additional accidents have occurred under similar circumstances, resulting in one fatality and one severe injury. FRA is issuing this Notice to provide details of these recent accidents, to

reinforce the existing recommendations in Safety Advisory 2025–02, and to add two recommendations. Specifically, this notice adds recommendations 5 and 6, which recommend railroads conduct in-person briefings with all operating employees performing or overseeing shoving or pushing movements and review and evaluate internal instruction, training, and examination programs for such employees.

FOR FURTHER INFORMATION CONTACT:

Christian Holt, Staff Director, Operating Practices Division, FRA Office of Railroad Safety, 1200 New Jersey Ave. SE, Washington, DC 20590; telephone (202) 366–0978; email Christian.Holt@dot.gov.

Disclaimer: This Notice is considered guidance pursuant to 49 CFR part 5, subpart C. Except when referencing laws, regulations, policies, or orders, the information in this Notice does not have the force and effect of law and is not binding in any way. This Notice expands upon the guidance in Safety Advisory 2025–02, published December 12, 2025 (90 FR 57811).

SUPPLEMENTARY INFORMATION:

Background

Safety Advisory 2025–02 described four fatal accidents between April 2020 and December 2025 involving railroad employees providing point protection during shoving or pushing movements over crossings equipped only with flashing lights or passive warning devices. To address the risks of these types of moves, the advisory recommended that railroads take four specific actions involving job briefings, operating rules, operational testing, and crossing-by-crossing evaluations. The advisory emphasized that railroads should identify and assess specific conditions that impede the performance of a complete visual assessment of a crossing, including road layout, physical obstructions or environmental conditions, and recommended that railroads use a designated and qualified employee stationed at the crossing to provide protection in these situations.

Since publication, two additional accidents currently under FRA investigation have occurred during shoving movements across such crossings, one fatally injuring a contractor operating a highway vehicle and the other seriously injuring a railroad employee. Both accidents may have been averted or the severity reduced, if the recommendations of Safety Advisory 2025–02 were implemented fully by railroads and railroad employees. FRA is issuing this notice to reinforce the importance of

ensuring that operating rules, job briefings, training and operational testing, and crossing hazard evaluations are performed to ensure that the required “track is clear” determination is made before rail equipment enters a crossing as part of a shoving or pushing movement.

Recent Significant Accidents

On June 13, 2026, at 7:48 a.m., in Bensenville, Illinois, the operator of a commercial fuel truck was fatally injured when the leading railcar of a Canadian Pacific Kansas City shoving movement struck the truck at a passively protected yard access crossing. A two-person remote control operator crew was conducting an eastward movement inside a remote-control zone. The truck turned off a parallel road onto the crossing without stopping, moving directly into the path of the shove movement.

On August 6, 2026, at approximately 10:17 a.m., a CSX Transportation conductor was seriously injured during a shoving movement at an industrial facility in College Park, Georgia. The conductor was riding the leading end of a boxcar and directing the movement over a passively protected industry crossing. A truck driver had departed the facility’s loading dock and was positioning his vehicle to back into a staging area when the leading railcar and passenger side of the truck collided. The collision pinned the conductor between the railcar and the truck, causing injuries that required a below-the-knee amputation.

Safety Advisory 2025–02

As originally issued, Safety Advisory 2025–02 included four recommendations which are summarized as follows:

1. *Rule Compliance and Job Briefings.* Railroads should review their rules related to 49 CFR 218.99, *Shoving or pushing movements*, to ensure compliance with the comprehensive job briefing requirements of 49 CFR 218.99 (including procedures for establishing and verifying that a track meets the “track is clear” criteria in 49 CFR 218.93).

2. *Operating Rules.* Railroads should review and update, if necessary, operating rules required by 49 CFR 218.99(a)(1) to ensure they account for all physical and operational factors necessary to determine if “track is clear.”

3. *Targeted Operational Testing.* Railroads should review and evaluate operational testing data related to shoving or pushing moves, prioritizing testing at crossings equipped with only flashing lights or passive warning devices.

4. *Crossing Hazard Evaluations.* Railroads should implement a program to evaluate whether operational, environmental and infrastructure conditions at crossings equipped with only flashing lights or passive warning devices permit employees to safely determine if the track is clear. If an evaluation demonstrates that it is not feasible for a riding employee to determine the “track is clear” as required by 49 CFR 218.99(b)(3), the railroad should update its operating rules and bulletins to require stop-and-flag protection at the crossing.

Additional Recommended Railroad Actions

FRA is revising the recommendations included in Safety Advisory 2025–02 as published on December 12, 2025, to add recommendations 5 and 6 as follows:

5. *Direct Employee Briefings.* Railroads should immediately distribute Safety Advisory 2025–02 and this notice to all operational supervisors, safety committees, and field personnel. Railroads should also conduct direct, face-to-face briefings with all operating employees who perform or oversee shoving or pushing movements. The briefings should emphasize 49 CFR 218.99(b) (specifically the point protection requirements under paragraph (b)(3)), the “track is clear” criteria of 49 CFR 218.93, and related operating rules or bulletins.

6. *Immediately Correct Training and Qualification Program Deficiencies.* Railroads should immediately review their written instruction, training, and examination programs required by 49 CFR 218.95 for employees who perform

duties subject to subpart F—Handling Equipment, Switches, and Fixed Derails, including employees who direct, control, or provide point protection for shoving or pushing movements. The review should determine whether those programs adequately address the point-protection requirements in 49 CFR 218.99(b)(3), the “track is clear” determination in 49 CFR 218.93, the consequences of noncompliance, and applicable operating rules. Railroads should immediately correct any program deficiencies, provide supplemental instruction, training, and examination as necessary, and verify from the records required by 49 CFR 218.95(a)(5) and (b) that each affected employee has been qualified on the applicable rules within the previous three years, as required by 49 CFR 218.95(a)(4).

Conclusion

FRA encourages railroads to take actions consistent with Safety Advisory 2025–02, as originally published, the additional recommendations in this notice, and any other complementary actions necessary to ensure the safety of rail transportation. Further, FRA will maintain continuous oversight regarding adherence to the requirements set forth in 49 CFR 218.99. This includes verifying compliance with the mandatory “track is clear” determination specified in 49 CFR 218.99(b) and defined under 49 CFR 218.93, conducted through systematic field inspections and the detailed analysis of railroad operational testing records. FRA may modify Safety Advisory 2025–02, issue additional safety advisories, or take other action necessary to ensure the highest level of safety on the Nation’s railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, under authority delegated in 49 CFR 1.89.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2026–19031 Filed 9–16–26; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 60

Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired
Electric Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60****[EPA-HQ-OAR-2025-0124; FRL-12674-02-OAR]****RIN 2060-AW55****Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: In this final rule, the U.S. Environmental Protection Agency (EPA) is repealing most provisions of the 2024 Carbon Pollution Standards for greenhouse gas (GHG) emissions from fossil fuel-fired electric generating units (EGUs) based on a reevaluation of the best system of emission reduction for the relevant subcategories. Specifically, the EPA is repealing the emission guidelines for existing fossil fuel-fired steam generating units, the carbon capture and sequestration/storage (CCS)-based standards for coal-fired steam generating units undertaking a large modification, and the CCS-based standards for new base load stationary combustion turbines (*i.e.*, Phase 2 standards). In a separate action published concurrently with this final rule, the EPA is issuing a supplemental proposal soliciting comment on additional reasons to rescind all GHG emission requirements for fossil fuel-fired EGUs to effectuate the best reading of Clean Air Act (CAA) section 111 and ensure consistency with applicable principles of administrative law beyond those reasons on which the EPA solicited comment in the June 2025 notice of proposed rulemaking.

DATES: This final rule is effective on November 16, 2026. The approval of the Director of the Federal Register (FR) for incorporation by reference (IBR) of certain material listed in this rule expires as of November 16, 2026.

ADDRESSES: The EPA established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2025-0124. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure statute restricts. 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 on the 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 at (202) 566-1744. The docket office has 10 business days to respond to these requests. With the exception of such material, publicly available docket materials are available electronically at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about this final rule, contact U.S. EPA, Attn: Dr. Gregory Honda, Mail Drop: Industrial Processing and Power Division, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2034; and email address: honda.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this notice the use of “we,” “us,” or “our” refers to the EPA. The EPA uses 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:

ACE Affordable Clean Energy [rule]
AI artificial intelligence
BSER best system of emission reduction
Btu British thermal units
Btu/kWh British thermal units per kilowatt-hour
CAA Clean Air Act
CAAA Clean Air Act Amendments
CCS carbon capture and sequestration/storage
CCUS carbon capture, utilization, and storage
CFR Code of Federal Regulations
CO₂ carbon dioxide
CPS Carbon Pollution Standards
CPP Clean Power Plan
CRA Congressional Review Act
DOE Department of Energy
EAV equivalent annualized value
EGU electric generating unit
EIA Energy Information Administration
E.O. Executive Order
EOR enhanced oil recovery
EPA Environmental Protection Agency
EPAct05 Energy Policy Act of 2005
FEED Front-End Engineering Design
FR *Federal Register*
GHG greenhouse gas
GW gigawatt
ICR information collection request
IGCC integrated gasification combined cycle
IRC Internal Revenue Code
lb pound
MMBtu million British thermal units
MMBtu/h million British thermal units per hour
MW megawatt
MWh megawatt-hour
MWe megawatt-equivalent
NAAQS National Ambient Air Quality Standards

NAICS North American Industry Classification System
NERC North American Electric Reliability Corporation
NETL National Energy Technology Laboratory
NGCC natural gas combined cycle
NPRM notice of proposed rulemaking
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OBBBA One Big Beautiful Bill Act of 2025
OMB Office of Management and Budget
PRA Paperwork Reduction Act
PV Present Value
RFA Regulatory Flexibility Act
RIA regulatory impact analysis
SO₂ sulfur dioxide
UIC Underground Injection Control
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

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I. Executive Summary

In this final rule, the EPA is finalizing the repeal of most of the GHG standards promulgated in the 2024 Carbon Pollution Standards (“2024 CPS”) for fossil fuel-fired power plants.¹ Specifically, the EPA is finalizing the repeal of the emission guidelines for existing fossil fuel-fired steam generating units, the CCS-based standards for coal-fired steam generating units undertaking a large modification, and the 2024 CCS-based standards for new base load stationary combustion turbines.

With this final action, the EPA addresses much of the regulatory uncertainty brought by the Agency’s novel attempts to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. The EPA attempted to restrict GHG emissions from power plants for the first time in 2015, when the Agency issued both new source performance standards (NSPS) for new power plants (“2015 NSPS”)² and emission guidelines for existing power plants (the Clean Power Plan (“2015 CPP”)).³

In *West Virginia v. EPA*, the U.S. Supreme Court struck down⁴ these efforts in large part, ruling that CAA section 111 does not authorize the EPA to adopt a regulatory scheme that “cap[s] carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity.”⁵ Rather than change course, however, the EPA in

2024 promulgated a new rule that embraced the goals of the 2015 NSPS and 2015 CPP by expanding restrictions on certain new sources and regulating existing sources in a similar manner.

The EPA’s most recent effort to regulate GHG emissions from the power sector, the 2024 CPS, includes standards of performance for new and reconstructed fossil fuel-fired combustion turbines and for certain modified fossil fuel-fired steam generating power plants, as well as rules directing States to set standards of performance for existing fossil fuel-fired steam generating power plants. During the rulemaking and subsequent litigation over the 2024 CPS, numerous States, regulated entities, and other stakeholders warned that these requirements are based on technologies that have not been adequately demonstrated, are unachievable, threaten to impose massive costs on the power sector, and do not adequately ensure the national interest in affordable, reliable electricity.

On January 20, 2025, President Trump issued Executive Order (E.O.) 14154, “Unleashing American Energy,” which directs Federal agencies, including the EPA, to review existing regulations “to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources—with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources.”⁶ The E.O. further affirms that it is “the policy of the United States to ensure that all regulatory requirements related to energy are grounded in clearly applicable law.”⁷ During the course of this review, the EPA has identified GHG emissions standards for power plants as one such action, including the 2024 CPS requirements that are the subject of this final rule.⁸

On February 19, 2025, President Trump issued E.O. 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” which directs Federal agencies, including the EPA, to identify and consider taking action to repeal “regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition” and “regulations that

implicate matters of social, political, or economic significance that are not authorized by clear statutory authority.”⁹ The EPA identified GHG emissions standards for power plants during the course of this review, including the 2024 CPS requirements that are the subject of this final rule.

On April 8, 2025, President Trump issued E.O. 14261, “Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241,” which determined that “coal is essential to our national and economic security” and established “a national priority to support the domestic coal industry by removing Federal regulatory barriers that undermine coal production.”¹⁰ E.O. 14261 specifically found that “coal resources will be critical to meeting the rise in electricity demand due to the resurgence of domestic manufacturing and the construction of artificial intelligence data processing centers” and to increasing “energy supply,” lowering “electricity costs,” stabilizing the power grid, creating “high paying jobs,” supporting “burgeoning industries,” and assisting allies abroad.¹¹ Accordingly, E.O. 14261 directed the EPA, among other Federal agencies, to “identify any guidance, regulations, programs, and policies within their respective executive department or agency that seek to transition the Nation away from coal production and electricity generation” and “consider revising or rescinding Federal actions identified in subsection (a) of this section consistent with applicable law.”¹² The EPA identified GHG emissions standards for power plants during the course of this review as well, including the 2024 CPS requirements that are the subject of this final rule and are estimated to result in mass closures of coal-fired power plants.

The EPA reviewed the GHG emissions standards for the power sector, as directed by E.O. 14154, E.O. 14219, and E.O. 14261, and has substantial concerns about the legal and technical underpinnings of the Agency’s efforts to regulate GHG emissions from fossil fuel-fired power plants. Based on a reassessment of the legal and technical conclusions in the 2015 NSPS and 2024 CPS, the EPA issued a notice of proposed rulemaking in June 2025 (“June 2025 NPRM”) that included both a primary proposal and an alternative proposal. The primary proposal would have repealed all GHG emissions

¹ 89 FR 39798 (May 9, 2024).

² 80 FR 64510 (October 23, 2015).

³ 80 FR 64662 (October 23, 2015).

⁴ The Supreme Court stayed the 2015 CPP after the U.S. Court of Appeals for the D.C. Circuit declined to do so prior to merits briefing. *West Virginia v. EPA*, 577 U.S. 1126 (2016).

⁵ 597 U.S. 697, 735 (2022).

⁶ 90 FR 8353 (January 20, 2025).

⁷ *Id.*

⁸ References to “GHG standards” here and elsewhere include NSPS promulgated under CAA section 111(b) and emission guidelines for existing sources promulgated under CAA section 111(d). *See* 42 U.S.C. 7411(b), (d).

⁹ 90 FR 10583 (February 25, 2025).

¹⁰ 90 FR 15517 (April 14, 2025).

¹¹ *Id.*

¹² *Id.*

standards for new and existing sources in the fossil fuel-fired EGU source category.¹³ Specifically, the EPA proposed to determine that CAA section 111 requires the Agency to make a finding that GHG emissions from fossil fuel-fired power plants “cause[, or contribute significantly” to “air pollution which may reasonably be anticipated to endanger public health or welfare” (which we shorthand as “dangerous air pollution”) as a predicate to regulating GHG emissions from those plants. The EPA further proposed to find that GHG emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution. The EPA is not acting on those proposed determinations at this time and is instead concurrently issuing a supplemental proposal soliciting additional public comment on the underlying question raised in the primary basis of the June 2025 NPRM: Whether the EPA lacks statutory authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. Whereas the primary proposal in the June 2025 NPRM sought public comment on whether fossil fuel-fired EGUs “contribute significantly” to air pollution, the supplemental notice seeks public comment on the distinct question whether global climate change concerns satisfy the threshold requirement in CAA section 111(b)(1)(A) that fossil fuel-fired power plant emissions contribute significantly to “air pollution which may reasonably be anticipated to endanger public health or welfare.”

The EPA’s alternative proposal was based on the Agency’s reexamination of the best system of emission reduction (BSER) determinations and associated requirements for fossil fuel-fired power plants in the 2024 CPS, which it undertook to ensure that all regulatory requirements are grounded in applicable law. Under CAA section 111(a)(1), the EPA determines the BSER which, taking into account cost and any nonair quality and environmental impacts and energy requirements, has been adequately demonstrated. Based on the review of the BSER and associated requirement, the EPA proposed, in the alternative, to repeal parts of the 2024 CPS including the emission guidelines and other CCS-based requirements. As discussed below, the EPA is finalizing the alternative proposal repealing parts of the 2024 CPS and revising the associated BSER determinations as follows.

The EPA is finalizing the repeal of the emission guidelines for existing fossil

fuel-fired steam generating units in their entirety. Specifically, the EPA is finalizing the determination that 90 percent CCS is not the BSER for existing long-term coal-fired steam generating units because 90 percent CCS has not been adequately demonstrated, the costs of 90 percent CCS are not reasonable, and the associated degree of emission limitation is not achievable. In a change from the 2024 CPS, the EPA concludes that previous projects that failed to achieve 90 percent CCS were not a sufficient basis to conclude the technology has been adequately demonstrated. Additionally, the carbon dioxide (CO₂) capture, pipeline, and sequestration infrastructure necessary to implement 90 percent CCS for the fleet of existing coal-fired steam generating units does not currently exist and would need to be broadly deployed. Because it is significantly unlikely that the necessary infrastructure for CCS can be deployed by the January 1, 2032 compliance date, the EPA is finalizing the determination that the degree of emission limitation in the 2024 CPS for long-term coal-fired steam generating units is not achievable.

The EPA is finalizing the determination that 40 percent natural gas co-firing is not the BSER for existing medium-term coal-fired steam generating units because 40 percent natural gas co-firing constitutes impermissible generation shifting under *West Virginia* and because the Agency erred in the 2024 CPS by construing *West Virginia* too narrowly in this respect. Additionally, a thorough consideration of the “energy requirements” BSER factor in CAA section 111(a)(1) shows that natural gas co-firing in a steam generating unit is an inefficient use of natural gas. Moreover, because it is unlikely that the necessary pipeline infrastructure can be deployed by the January 1, 2030 compliance date, the EPA is finalizing the determination that the degree of emission limitation is not achievable. Based on these conclusions, the EPA is repealing the requirements in the emission guidelines related to existing long-term and medium-term coal-fired steam generating units.

The EPA is also repealing the requirements in the emission guidelines related to natural gas- and oil-fired steam generating units. The EPA believes that requiring States to develop, submit, and implement plans solely for natural gas- and oil-fired steam generating units would be an inefficient use of State resources, as these sources comprise a relatively small part of the source category and the requirements under the 2024 emission guidelines for

these sources would result in few or no emission reductions.

Furthermore, because the EPA is finalizing that 90 percent CCS has not been adequately demonstrated, the costs are not reasonable, and the degree of emission limitation is not achievable, the EPA is finalizing the repeal of the CCS-based requirements for coal-fired steam generating units undertaking a large modification.

The EPA is also finalizing that 90 percent CCS has not been adequately demonstrated and that the costs are not reasonable for new base load stationary combustion turbines. Furthermore, because it is unlikely that the infrastructure necessary for CCS can be deployed by the January 1, 2032 compliance date, the EPA has determined that the phase 2 standards of performance in the 2024 CPS for new base load combustion turbines are not achievable. The contrary determinations in the 2024 CPS appear to be in error for many of the same reasons that apply to existing coal-fired steam generating units. Consequently, the EPA is finalizing repeal of the phase 2 CCS-based requirements for new base load stationary combustion turbines.

The EPA solicited comment in general on the other GHG requirements for fossil fuel-fired EGUs and received comments suggesting that the 2024 efficiency-based standards (*i.e.*, the phase 1 standards) for new stationary combustion turbines are not achievable. However, the EPA is not revising or repealing those requirements in this final rule. The EPA acknowledges commenters’ meritorious concerns regarding the 2024 efficiency-based standards for new stationary combustion turbines. While the EPA is not repealing or otherwise revising the 2024 efficiency-based standards in this final action, the Agency notes that it is concurrently issuing a supplemental proposal that, if finalized, would repeal all GHG standards for the fossil fuel-fired EGU source category under CAA section 111, including the 2024 efficiency-based standards in question. That action, if finalized as proposed, would resolve commenters’ concerns.

A. Cost Savings

Over the 2026 to 2047 period, the present value (PV) of the estimated compliance cost savings for the power sector in 2024 dollars, discounted to 2025, is \$160 billion using a three percent discount rate and \$95 billion using a seven percent discount rate. Over this same period, the PV of the estimated real resource cost savings, which is the full avoided expenditure on physical and labor inputs used in the

¹³ 90 FR 25752 (June 17, 2025).

power sector for compliance, is \$280 billion using a three percent discount rate and \$180 billion using a seven percent discount rate discounted to 2025.¹⁴ The cost savings do not account for benefits such as ensuring electric grid reliability and other secondary and tertiary benefits that cannot be monetized.

II. General Information

A. Where To Get a Copy of This Document and Other Related Information

In addition to the docket, an electronic copy of this final action will be on the internet. Following signature by the Administrator, the EPA will post a copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>. Following publication in the **Federal Register** (FR), the EPA will post the FR version at this same website.

B. Action Applicability

Fossil fuel-fired electric utility steam generating units and stationary combustion turbine EGUs that provide electricity to the electric grid (a utility power distribution system) comprise the source category that is subject to this action. The 2022 North American Industry Classification System (NAICS) code for the source category is 221112. The EPA does not intend this identification to be exhaustive but rather to provide a guide for readers regarding the entities that this final action is likely to affect.

The final repeal of 40 Code of Federal Regulations (CFR) part 60, subpart UUUU, is applicable to States that, under the existing regulations, must develop and submit state plans pursuant to CAA section 111(d). The final repeal of 90 percent CCS-based requirements of 40 CFR part 60, subpart TTTT, is applicable to affected facilities that began construction, reconstruction, or modification after May 23, 2023. This final action also affects Federal, State, local, and Tribal government entities that own and/or operate EGUs subject to 40 CFR part 60, subpart TTTT, as affected facilities are no longer subject to requirements based on 90 percent CCS.

C. Statutory Authority

CAA section 111 authorizes the EPA to list and regulate a category of stationary sources if the Administrator, “in his judgment,” finds that the source category “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹⁵ The listing of a source category triggers the EPA’s authority to promulgate “standards of performance” for new sources and, under limited circumstances, to prescribe regulations under which States submit plans that establish standards of performance for existing sources.¹⁶ CAA section 111, along with agencies’ authority to reconsider prior regulations, provides the statutory authority for this final action.¹⁷

1. Regulation of Emissions From New Sources

CAA section 111(b)(1)(A) authorizes the Administrator to publish, and from time-to-time revise, a list of categories of stationary sources that the Administrator, “in his judgment,” finds “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Once the EPA lists a source category under CAA section 111(b)(1)(A), the EPA must, under CAA section 111(b)(1)(B), establish “standards of performance” for “new sources” in the source category. These standards are referred to as new source performance standards, or NSPS. The NSPS are national requirements that apply directly to new sources within the relevant source category.

CAA section 111(a)(2) defines a “new source” as “any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section, which will be applicable to such source.” CAA section 111(a)(4) defines “modification” as “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” While this provision treats modified sources as new sources, the EPA’s

regulations also treat a source that undergoes “reconstruction,” by substantially replacing its components, as a new source.¹⁸

CAA section 111(a)(1) defines “standard of performance” as “a standard for emissions of air pollutants” that must be promulgated or revised in a specified manner. When the EPA establishes or revises a performance standard, CAA section 111(a)(1) provides that such a standard must “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.” Thus, the term “standard of performance,” as used in CAA section 111, makes clear that the EPA must determine both the “best system of emission reduction . . . adequately demonstrated” for emissions of the relevant air pollutants by regulated sources in the source category and the “degree of emission limitation achievable through the application of the [BSER].”¹⁹ As explained elsewhere in this preamble, to determine the BSER, the EPA first identifies the “system[s] of emission reduction” that are “adequately demonstrated” and then determines the “best” of those adequately demonstrated systems, “taking into account” factors including “cost,” “nonair quality health and environmental impact,” and “energy requirements.” The EPA has discretion in determining the BSER, and has historically followed a “technology-based approach” that focuses on “measures that improve the pollution performance of individual sources,” such as “add-on controls.”²⁰ (If no system of emission reduction can be deemed adequately demonstrated in light of the EPA’s consideration of these factors, then it may be the case that EPA cannot identify BSER).

After determining the BSER, the EPA derives the “degree of emission limitation achievable” through “application” of the BSER. A standard of performance is “achievable” if a technology can reasonably be projected to be available to an individual source at the time it is constructed so as to allow it to meet the standard.²¹ The EPA must then, under CAA section

¹⁵ 42 U.S.C. 7411(b)(1)(A).

¹⁶ 42 U.S.C. 7411(b), (d).

¹⁷ See *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025); *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 517–18 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41–42 (1983); see also *Clean Air Council v. Pruitt*, 862 F.3d 1, 8 (D.C. Cir. 2017) (“Agencies obviously have broad discretion to reconsider a regulation at any time.”)

¹⁸ 40 CFR 60.15.

¹⁹ *West Virginia*, 597 U.S. at 709.

²⁰ See *id.* at 727 (quoting the 2015 CPP).

²¹ *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 391 (D.C. Cir. 1973).

¹⁴ The real resource cost savings account for the costs that society avoids paying as an outcome of the CPS requirements the EPA is repealing in this final rule. See Regulatory Impact Analysis for the Final Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, available in the docket for this rulemaking (Document ID No. EPA-HQ-OAR-2025-0124).

111(b)(1)(B), promulgate “standard[s] for emissions”—the NSPS—that reflect that level of stringency. The EPA may determine that different sets of sources have different characteristics relevant for determining the BSER for emissions of the relevant air pollutants and may subcategorize sources accordingly pursuant to CAA section 111(b)(2).²²

2. Regulation of Emissions From Existing Sources

The EPA has generally used CAA section 111 to establish standards for emissions of air pollutants from new sources within a category. In the rare instances where new stationary source standards concern air pollutant emissions that are not regulated under the National Ambient Air Quality Standards (NAAQS) program pursuant to CAA sections 108–110 or under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program pursuant to CAA section 112, the statute provides a separate authority for addressing emissions of such air pollutants from existing sources in the source category.²³ In these limited circumstances, the promulgation of standards for new stationary sources triggers the EPA’s authority to promulgate regulations for emissions of that pollutant from existing sources within the same category under CAA section 111(d).²⁴

In contrast to the national regime for new sources under CAA section 111(b), CAA section 111(d) establishes a framework of “cooperative federalism for the regulation of existing sources.”²⁵ CAA section 111(a)(6) defines an “existing source” as “any stationary source other than a new source.” CAA section 111(d)(1) provides that when air pollutants covered by an NSPS for a source category are not already encompassed within the NAAQS program or NESHAP program, the EPA “shall prescribe regulations which shall establish a procedure similar to that provided by” CAA section 110 “under which each State shall submit to the Administrator” a plan for addressing emissions of such air pollutants by existing sources within such source

category.²⁶ Reference to CAA section 110 incorporates the statute’s provision for State submission and EPA review of state implementation plans (SIPs) that provide for the implementation, maintenance, and enforcement of the NAAQS for the areas within such State.²⁷ In a comparable manner, State plans required by the regulations authorized in CAA section 111(d) must “establis[h] standards of performance for any existing stationary source” for the air pollutant at issue and “provid[e] for the implementation and enforcement of such standards of performance.”

In the relatively few instances in which the EPA applies CAA section 111(d), the Agency generally promulgates regulations, termed “emission guidelines,” that identify the BSER and the degree of emission limitation achievable through the application of the BSER. These regulations then require States to establish standards of performance for emissions of the air pollutant at issue by covered sources that reflect that level of stringency.²⁸ States need not compel regulated sources to adopt the particular components of the BSER itself. Rather, States have discretion in designing the policies and rules their sources will use to achieve the degree of emission limitation required by the emission guidelines. The statute also requires the EPA’s regulations to permit a State “in applying a standard of performance to any particular source” to “take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.”²⁹ Once the EPA approves a State’s plan, its provisions become federally enforceable against the source in the same manner as the provisions of an approved SIP under the CAA.³⁰ If a State elects not to submit a plan or submits a plan that the EPA does not find “satisfactory,” the CAA authorizes the Agency to promulgate a plan that establishes Federal standards of performance for the State’s existing sources.³¹

3. Key Elements of Determining a Standard of Performance

Congress first defined the term “standard of performance” when enacting CAA section 111 in the 1970 CAA, amended the definition in the 1977 CAA Amendments, and amended the definition again in the 1990 CAA Amendments to largely restore the definition as in the 1970 CAA. The D.C. Circuit has reviewed CAA section 111 rulemakings on numerous occasions since the early 1970s and developed a body of case law that interprets the term.³²

Whether promulgated by the EPA under CAA section 111(b) or established by the States under CAA section 111(d) in response to emission guidelines promulgated by the Agency, the basis for standards of performance is the “degree of emission limitation” that is “achievable” by sources in the source category by application of the “best system of emission reduction” that the EPA determines is “adequately demonstrated.” As explained in this section, systems are not “adequately demonstrated” if they are “purely theoretical or experimental.”³³ The D.C. Circuit has stated that in determining the “best” adequately demonstrated system for the pollutants at issue, the EPA must also take into account “the amount of air pollution” reduced.³⁴ The D.C. Circuit has also stated that the EPA may weigh the various factors identified in the statute and case law to determine the “best” system and has emphasized that the EPA has significant discretion in weighing the factors.³⁵

After determining the BSER, the EPA sets an achievable emission limit based on application of the BSER.³⁶ For a CAA section 111(b) rule, the EPA determines the standard of performance that reflects that achievable emission limit. For a CAA section 111(d) rule, the States establish the standards of performance that reflect the degree of emission limitation that the EPA has included in

³² *Am. Lung Ass’n*, 985 F.3d at 914; *Delaware v. EPA*, No. 13–1093 (D.C. Cir. May 1, 2015); *Portland Cement Ass’n v. EPA*, 665 F.3d 177 (D.C. Cir. 2011); *Lignite Energy Council v. EPA*, 198 F.3d 930 (D.C. Cir. 1999); *Sierra Club v. Costle*, 657 F.2d 298 (D.C. Cir. 1981); *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427 (D.C. Cir. 1973); *Portland Cement Ass’n*, 486 F.2d at 375.

³³ *Essex Chem. Corp.*, 486 F.2d at 433–34.

³⁴ *Sierra Club*, 657 F.2d at 326; *see id.* at 347 (stating that the EPA must take “technological innovation” into account).

³⁵ *Lignite Energy Council*, 198 F.3d at 933 (“Because section 111 does not set forth the weight that should be assigned to each of these factors, we have granted the agency a great degree of discretion in balancing them.”).

³⁶ *See, e.g.*, 77 FR 49490, 49494 (August 16, 2012) (describing the three-step analysis in setting a standard of performance).

²² 42 U.S.C. 7411(b)(2).

²³ 42 U.S.C. 7411(d)(1)(A)(i)–(ii).

²⁴ *See West Virginia*, 597 U.S. at 710 (“Section 111(d) thus ‘operates as a gap-filler,’ empowering EPA to regulate harmful emissions not already controlled under the Agency’s other authorities. . . . Reflecting the ancillary nature of Section 111(d), EPA has used it only a handful of times since the enactment of the statute in 1970.”).

²⁵ *Am. Lung Ass’n v. EPA*, 985 F.3d 914, 931 (D.C. Cir. 2021), *rev’d in part sub nom. West Virginia*, 597 U.S. 697.

²⁶ 42 U.S.C. 7411(d)(1). CAA section 111(a)(6) defines an “existing source” as “any stationary source other than a new source.” 42 U.S.C. 7411(a)(6).

²⁷ 42 U.S.C. 7410.

²⁸ As discussed below, CAA section 111(d)(1)(B) provides that, in certain circumstances, States may apply standards of performance that are less stringent than the degree of emission limitation that the EPA determines in the emission guidelines. *See* 42 U.S.C. 7411(d)(1)(B).

²⁹ 42 U.S.C. 7411(d)(1).

³⁰ 42 U.S.C. 7411(d)(2)(B).

³¹ 42 U.S.C. 7411(d)(2)(A).

an emission guideline. In applying these standards to existing sources, States are permitted to consider a source's remaining useful life and other factors.³⁷

In identifying "system[s] of emission reduction," the EPA historically has followed a "technology-based approach" that focuses on "measures that improve the pollution performance of individual sources," such as "add-on controls."³⁸ In the 2015 CPP, the EPA significantly departed from its historical approach to standard setting under CAA section 111(b) by setting a BSER in which the "system" of emission reduction involved shifting electricity generation from one type of fuel to another. In *West Virginia*, the U.S. Supreme Court applied the major questions doctrine to hold that neither the term "system" nor any other provision of the CAA provided the requisite clear authorization to support the 2015 CPP's BSER, which the Court described as "carbon emissions caps based on a generation shifting approach"³⁹ that capped GHG "emissions at a level that will force a nationwide transition away from the use of coal to generate electricity[.]"⁴⁰ The Court explained that the EPA's BSER "forc[es] a shift throughout the power grid from one type of energy source to another," which constituted "unprecedented power over American industry" and was different in kind from the type of "system" of emission reduction envisioned by CAA section 111(d).⁴¹

To qualify as the BSER, the system of emission reduction must be "adequately demonstrated" as "the Administrator determines."⁴² The plain text of CAA section 111(a)(1), and in particular the terms "adequately" and "the Administrator determines," confers upon the EPA the discretion to identify the appropriate system, including making scientific and technological determinations and considering a broad range of policy considerations.⁴³ However, the terms "adequately" and "demonstrated," as well as applicable case law, make clear that the EPA may not determine that a "purely theoretical or experimental" system is "adequately demonstrated."⁴⁴ Moreover, applicable

case law and the text and structure of CAA section 111, including the requirement that the resulting emission limitation be "achievable" and the eight-year review requirement in CAA section 111(b)(1)(B), place an outer bound on the EPA's discretion to project technological development into the future.

In addition, CAA section 111(a)(1) requires the EPA to account for "the cost of achieving [the emission] reduction" in determining the adequately demonstrated BSER. Although the CAA does not describe how the EPA should account for costs to affected sources, the D.C. Circuit has formulated the cost standard in various ways, including by stating on the upper bound that the EPA may not adopt a standard the cost of which would be "excessive" or "unreasonable."⁴⁵ The EPA has discretion in considering cost under CAA section 111(a), both in determining the appropriate level of costs and in balancing costs with other BSER factors.⁴⁶ The D.C. Circuit has repeatedly upheld the EPA's consideration of cost in reviewing standards of performance.⁴⁷

Under CAA section 111(a)(1), the EPA must take into account "any nonair quality health and environmental impact and energy requirements" in determining the BSER. Nonair quality health and environmental impacts may include the impacts of the disposal of byproducts of the air pollution controls or requirements of the air pollution control equipment for water.⁴⁸ Energy requirements may include the impact, if any, of the air pollution controls on the source's own energy needs.⁴⁹ In addition, based on the D.C. Circuit's interpretations of CAA section 111, energy requirements may also include the impact, if any, of the air pollution controls on the energy supply for a particular area or nationwide.⁵⁰ Furthermore, the EPA has considered

EPA may not base an "adequately demonstrated" determination on a "'crystal ball' inquiry") (citation omitted).

⁴⁵ *Sierra Club*, 657 F.2d at 343; see 79 FR 1430, 1464 (January 8, 2014); *Lignite Energy Council*, 198 F.3d at 933 (costs may not be "exorbitant"); *Portland Cement Ass'n v. Train*, 513 F.2d 506, 508 (D.C. Cir. 1975) (costs may not be "greater than the industry could bear and survive").

⁴⁶ *Sierra Club*, 657 F.2d at 343.

⁴⁷ See *Essex Chem. Corp.*, 486 F.2d at 440; *Portland Cement Ass'n*, 486 F.2d at 387–88; *Sierra Club*, 657 F.2d at 313.

⁴⁸ *Portland Cement Ass'n*, 486 F.2d at 387–88.

⁴⁹ For details on the modeled energy requirements associated with CCS, please see section 6.4 of the RIA for this final rule.

⁵⁰ See *Sierra Club*, 657 F.2d at 327–28 (quoting 44 FR 33580, 33583–84 (June 11, 1979)); 79 FR 1430, 1465 (January 8, 2014) (citing *Sierra Club*, 657 F.2d at 351).

under this statutory factor whether possible controls would create risks to the reliability of the national electricity system.⁵¹

The D.C. Circuit has also held that the term "best" authorizes the EPA to consider factors that further the purpose of the statute in addition to the ones enumerated in CAA section 111(a)(1). In particular, consistent with the plain language and the purpose of CAA section 111(a)(1), which requires the EPA to determine the "best system of emission reduction" (emphasis added), the D.C. Circuit has previously held that the Agency must consider the quantity of emissions at issue.⁵² The EPA has broad discretion in determining which adequately demonstrated system of emission reduction is the "best." In *Sierra Club*, the D.C. Circuit explained that "section 111(a) explicitly instructs the EPA to balance multiple concerns when promulgating a NSPS" and emphasized that "[t]he text gives the EPA broad discretion to weigh different factors in setting the standard," including the amount of emission reductions, the cost of the controls, and the nonair quality environmental impacts and energy requirements.⁵³

A standard of performance is "achievable" if a technology can reasonably be projected to be available to an individual source at the time it is constructed so as to allow the source to meet the standard.⁵⁴ The courts have established this approach for achievability in cases concerning CAA section 111(b) NSPS. A generally comparable approach applies to CAA section 111(d), although the BSER may differ in some cases between new and existing sources due to, for example, higher costs and feasibility of retrofit.⁵⁵ For existing sources, CAA section 111(d)(1) requires the EPA to establish regulations for State plans that, in turn, must include "standards of performance." As the Supreme Court has recognized, the EPA generally carries out this provision by promulgating emission guidelines that determine the BSER for a source category and then identify the degree of

⁵¹ See, e.g., 89 FR 39886 (May 9, 2024).

⁵² *Sierra Club*, 657 F.2d at 326. The D.C. Circuit has also held that Congress intended for CAA section 111 to create incentives for new technology, and therefore that the EPA is to consider technological innovation as one of the factors in determining the "best system of emission reduction." See *id.* at 346–47.

⁵³ *Sierra Club*, 657 F.2d at 319, 321; see also *New York v. Reilly*, 969 F.2d 1147, 1150 (D.C. Cir. 1992).

⁵⁴ See *Portland Cement Ass'n*, 486 F.2d at 391.

⁵⁵ See, e.g., 40 FR 53340 (November 17, 1975).

³⁷ 42 U.S.C. 7411(d)(1).

³⁸ See *West Virginia*, 597 U.S. at 727 (quoting 80 FR 64662, 64784 (October 23, 2015)).

³⁹ *Id.* at 732.

⁴⁰ *Id.* at 734.

⁴¹ *Id.* at 728 (citation omitted).

⁴² 42 U.S.C. 7411(a)(1).

⁴³ *Nat'l Asphalt Pavement Ass'n v. Train*, 539 F.2d 775, 786 (D.C. Cir. 1976); *Essex Chem. Corp.*, 486 F.2d at 434.

⁴⁴ *Essex Chem. Corp.*, 486 F.2d at 433–34; see *Portland Cement Ass'n*, 486 F.2d at 391–92 (the

emission limitation achievable by application of the BSER.⁵⁶

D. Severability

In this final rule, the EPA is repealing (1) the emission guidelines for existing fossil fuel-fired steam generating EGUs in 40 CFR part 60, subpart UUUUb; (2) the 90 percent CCS-based standards of performance for coal-fired steam generating units undertaking a large modification in 40 CFR part 60, subpart TTTT; and (3) the 90 percent CCS-based standards of performance for new base load stationary combustion turbines in 40 CFR part 60, subpart TTTTa. Although the record evidence supporting each of these separate actions may overlap, particularly pertaining to 90 percent CCS, the repeal of each is supported by its own, standalone rationale and is severable from the others. That is, the repeal of the emission guidelines for existing sources in subpart UUUUb does not impact the 90 percent CCS-based standards of performance for coal-fired steam generating units undertaking a large modification and new base load stationary combustion turbines, as these rules apply to different sets of sources. Similarly, the repeal of the 90 percent CCS-based standards of performance either for modified sources or for new sources does not impact either of the two other rules. Again, while the records supporting each of these separate actions may overlap, application of the record evidence to each of the separate sets of regulated sources may yield different outcomes. If a court were to invalidate one or more of those actions, the EPA would still be able to implement the repeal of the remaining action or actions.

Additionally, within the group of existing fossil fuel-fired steam generating units (the sources regulated by 40 CFR subpart 60 subpart UUUUb), each of the following actions is severable: repeal of the BSER determination and associated requirements for the subcategory of long-term coal-fired steam generating EGUs, repeal of the BSER determination and associated requirements for the subcategory of medium-term coal-fired steam generating EGUs, and repeal of the requirements for the subcategory of oil- and natural gas-fired steam generating EGUs. That is, the repeal of the requirements for each separate subcategory of existing fossil fuel-fired

steam generating units is based on an independent rationale and is severable from the repeal of the requirements for each other subcategory of existing units. If a court were to invalidate the EPA's action with regard to one or more subcategories of existing units, the Agency would still be able to implement the repeal of the requirements for the remaining subcategories or subcategory. This is because the requirements for each subcategory are self-contained in the regulations and, due to the design of the emission guidelines in subpart UUUUb, it would have been relatively difficult for sources to shift between subcategories. Thus, the repeal of the requirements for each subcategory of existing fossil fuel-fired steam generating units is severable.

E. Reliance Interests

The EPA requested comment on reliance interests on the 2015 NSPS and the 2024 CPS in the June 2025 NPRM that commenters believed the Agency should consider in formulating a final action.⁵⁷ Potentially significant and legitimate reliance interests may arise, for example, when regulated parties or other stakeholders expend resources to comply with existing standards, including by pricing compliance into costs for consumers. Significant and legitimate reliance interests may also arise when stakeholders reasonably factored the existence of standards into concrete plans that cannot be readily modified. Under relevant case law, these and other reliance interests may be a relevant consideration to weigh against competing rationales when deciding whether to change the Agency's position.⁵⁸ However, the EPA notes that general interests in retaining the at-issue 2024 CPS requirements for the sake of regulating GHG emissions from fossil fuel-fired power plants do not justify such retention in the absence of statutory authority and a reasoned basis for particular control requirements. To the extent the EPA is repealing aspects of the 2024 CPS based on applicable statutory requirements, the unlawful nature of those aspects necessitates repeal; the change-in-position doctrine does not expand an agency's statutory authority for the purpose of addressing reliance interests. Where possible and appropriate, the Agency considered whether any asserted reliance interests are significant and legitimate and, if so, whether different or additional regulatory actions

could address such concerns, consistent with the requirements of the statute.⁵⁹

The EPA carefully reviewed public comments to assess whether any aspects of this final action should be adjusted to account for reliance interests. The Agency received no comments on reliance interests arising from the 2024 CPS from regulated entities. To our knowledge, no expenditures on projects involving fossil fuel-fired power plants have been made exclusively in response to the 2024 CPS requirements that the EPA is repealing. The EPA notes that under the compliance dates and assumed project schedules for the two control strategies that served as the basis for requirements in the 2024 CPS concerning coal-fired power plants—90 percent CCS and 40 percent natural gas co-firing—affected sources would not yet have incurred significant expenditures. The compliance dates for these requirements, as well as the alternative compliance option of ceasing operations, were not scheduled to begin until 2032. Although, as discussed elsewhere in this preamble, the requirements involved a long implementation timeline and many fossil fuel-fired EGUs are subject to long planning horizons, much of the required buildout was anticipated to be on the part of third parties (pipeline infrastructure and injection wells, for example), and this rulemaking occurred far enough in advance to forestall the vast majority of sunk costs that would otherwise have been incurred. Based on information available to the Agency, such costs would have begun to accrue in earnest around the time of this final rule, making the action both timely and supporting reliance on the cost- and achievability-based rationales discussed herein.

Similarly, the EPA did not receive any comments from States on any resource expenditures they may have made to develop State plans in response to the emission guidelines for existing sources under 40 CFR part 60, subpart UUUUb. The EPA has not received any State plan submissions to date, and such plans were subject to extension opportunities and review that may have involved different timelines and further efforts in any event. Nor has the EPA promulgated a Federal plan in the absence of approved State plans, meaning air agencies have not expended resources participating in such a rulemaking or assisting regulated sources with compliance.

⁵⁶ See *West Virginia*, 597 U.S. at 710; 40 CFR 60.21(e), 60.21a(e) (definition of "emission guideline" includes provision of the degree of emission limitation achievable through the application of the BSER as determined by the Administrator).

⁵⁷ 90 FR 25752, 25777 (June 17, 2025).

⁵⁸ See, e.g., *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020).

⁵⁹ The Agency also notes that because this final rule addresses certain requirements of the 2024 CPS only, we are not addressing any potential reliance interests on the 2015 NSPS at this time.

The EPA received one comment asserting State-related reliance interests, summarized below. However, upon careful examination, the EPA determined that this comment asserted general interests that are not properly understood as significant and serious reliance on the 2024 CPS that would warrant a different or additional regulatory outcome as to the 2024 CPS requirements at issue in this rulemaking. Therefore, the Agency is not aware of any substantial reliance interests that would have informed its decision making for purposes of this final action.

Comment: One commenter asserted that State and local air agencies are relying on potential non-GHG emission reduction co-benefits from the 2024 CPS to reach NAAQS attainment for criteria pollutants. The commenter asserted that State and local agencies have invested significant staff hours and funds in planning, outreach, modeling, and rule development to implement SIPs for NAAQS attainment. The commenter stated that the proposed repeal potentially required States to develop planning scenarios with and without the 2024 CPS. The commenter stated that State and local agencies must develop new attainment strategies and incur additional expenditures.

EPA Response: The EPA disagrees that State and local air agencies have reasonably relied on the at-issue 2024 CPS requirements to the extent that the impact of repeal on planning activities would amount to serious and irreversible harms. While the EPA acknowledges there may be overlaps between NAAQS attainment planning and the GHG control strategies that States would have had to develop under the 2024 CPS, these programs are governed by separate statutory provisions and address different pollutants on different timelines and under different regulatory paradigms. That is, while GHG control strategies States may have been developing pursuant to the 2024 CPS may have had co-benefits in terms of reductions of criteria air pollutants, we disagree that such co-benefits engender serious reliance interests relevant to this rulemaking because they do not justify retaining a GHG regulatory program that is not consistent with the relevant statutory requirements. This final action does not impact any of the EPA's criteria pollutant standards of performance for power plants regulated under and listed in various pre-2015 source categories pursuant to CAA section 111, which are more directly relevant to NAAQS attainment.

Moreover, the absence of comments raising resource expenditures related to State and local air agency implementation of the 2024 CPS emission guidelines suggests that air agencies have not, in fact, expended significant resources developing GHG control strategies because of the 2024 CPS. NAAQS attainment efforts are ongoing, and the projected criteria emission co-benefits in the 2024 CPS for the at-issue requirements are small in absolute terms. That is not surprising given the relatively long time horizon involved in developing such submissions and the short period of time that elapsed between finalization of the 2024 CPS and the announcement of reconsideration. To the extent the commenter asserts that State and local air agencies worked to develop options with and without the 2024 CPS, the Agency notes that such considerations are expected when analyzing the many options available to States in exercising their considerable discretion in developing strategies to attain and maintain the NAAQS and that requirements, particularly at the proposal stage, are necessarily subject to change.

While it is reasonable for States to consider the different control strategies they will be applying to their sources in a coordinated manner, the 2024 CPS requirements at issue could not have engendered serious reliance interests under the circumstances sufficient to warrant different or additional regulatory actions in this rulemaking. The Agency finalized the CPS in May 2024 and announced its intention to reconsider the rule in March 2025.⁶⁰ At the same time, NAAQS attainment planning has been ongoing, in many cases, for decades. It is therefore not likely that States could have relied on the existence of and obligations under the 2024 CPS for NAAQS attainment planning purposes. And, in all likelihood, State and local air agencies would necessarily have to take into consideration other developments in the electric power sector due to changes in, e.g., electricity demand, such that they would be considering the adequacy of their NAAQS attainment planning even absent the repeal of the 2024 CPS requirements being finalized in this action. Moreover, it is a normal course of action for State and local air agencies

to re-evaluate their planning in response to changes in Federal air regulations.

Considering these factors, the EPA believes that the commenter's concerns do not constitute a serious reliance interest warranting a different outcome. Such co-benefit considerations would not be an adequate basis to retain the at-issue 2024 CPS requirements, which must be justified under and consistent with statutory requirements with respect to the subject of the regulations (i.e., GHG emissions). The 2024 CPS regulates GHG emissions in the form of CO₂ for the fossil fuel-fired EGU source category and the Agency did not, in the 2024 CPS, analyze or promulgate the at-issue requirements as multi-pollutant standards.

III. Background

A. EPA Regulation of GHG Emissions Under CAA Section 111

This section discusses the EPA's efforts to regulate GHG emissions under CAA section 111 since 2015, including the regulation of fossil fuel-fired EGUs, associated case law that is relevant to this action, and the EPA's asserted legal basis for regulating GHG emissions under CAA section 111.

The EPA has regulated air pollutants from power plants under CAA section 111 since 1971, when the Agency listed "fossil fuel-fired steam generators of more than 250 million British thermal units per hour (MMBtu/h) heat input" as a source category under CAA section 111(b)(1)(A)⁶¹ and subsequently promulgated NSPS for certain air pollutants.⁶² In 1977, the EPA listed fossil fuel-fired "stationary gas turbines" in a category under CAA section 111(b)(1)(A)⁶³ and subsequently promulgated NSPS for certain air pollutants.⁶⁴ However, the EPA did not invoke CAA section 111 to regulate GHG emissions from power plants until 2015, when the Agency promulgated the 2015 NSPS, which addressed GHG emissions as measured by the equivalent of CO₂ emissions, from new fossil fuel-fired EGUs under CAA section 111(b);⁶⁵ and the 2015 CPP, which set emission guidelines directing States to regulate GHG emissions as measured by the equivalent of CO₂ emissions from existing EGUs under CAA section 111(d).⁶⁶

⁶¹ 36 FR 5931 (March 31, 1971).

⁶² See, e.g., 36 FR 24876 (December 23, 1971); 40 CFR 60, subpart Da.

⁶³ See 42 FR 53657 (October 3, 1977).

⁶⁴ See, e.g., 44 FR 62792 (September 10, 1979); 40 CFR 60, subpart KKKK.

⁶⁵ 80 FR 64510 (October 23, 2015).

⁶⁶ 80 FR 64662 (October 23, 2015).

⁶⁰ "Trump EPA Announces Reconsideration of Biden-Harris Rule, 'Clean Power Plan 2.0,'" That Prioritized Shutting Down Power Plants While Raising Costs on American Families" (March 12, 2025). Available at: <https://www.epa.gov/newsreleases/trump-epa-announces-reconsideration-biden-harris-rule-clean-power-plan-20-prioritized>.

In the 2015 NSPS, the EPA laid out a novel legal basis for regulating GHG emissions based on global climate change concerns under CAA section 111. Additionally, in that rule, the EPA asserted that the Agency was not required to make a finding of significant contribution under CAA section 111 before regulating GHG emissions. The EPA explained that CAA section 111(b)(1)(A) requires the Administrator to list any source category that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA posited that, unlike other CAA provisions, CAA section 111(b)(1)(A) does not require the EPA to make endangerment and significant contribution findings for individual pollutants. Rather, the EPA asserted that once such findings are made for *any* pollutant emitted by a source category, the Agency has discretion to regulate *all* pollutants emitted by the source category subject only to rational basis constraints.⁶⁷

Using this framework, the EPA created a new source category (*i.e.*, all fossil fuel-fired EGUs) consisting of the type of power plants previously listed in the 1970s under separate source categories. Specifically, the EPA took the step of “combining the steam generator and combustion turbine categories into a single category of fossil fuel-fired electricity generating units for purposes of promulgating standards of performance for GHG emissions.”⁶⁸ The EPA explained that “[c]ombining the two categories is reasonable because they both provide the same product: Electricity services,” and that combining the source categories in the 2015 NSPS was consistent with the Agency’s decision to combine the categories “in the CAA section 111(d) rule for existing sources that accompanies [the 2015 NSPS],” *i.e.*, in the 2015 CPP.⁶⁹ The Agency maintained, however, that it was not listing a new source category and therefore was not required to make any endangerment or significant contribution finding for the fossil fuel-fired EGU source category to promulgate NSPS.

The EPA determined that it had a rational basis for concluding that emissions of CO₂ from fossil fuel-fired power plants merit regulation under CAA section 111. In reaching that conclusion, the Agency stated that it had determined in the 2009 Endangerment Finding that GHG

emissions may reasonably be anticipated to endanger public health or welfare and that more recent information confirmed this determination. The EPA explained that the approach it was taking with regard to endangerment and GHG emissions from the fossil fuel-fired EGU source category was “substantially similar to that reflected in the 2009 Endangerment Finding and the 2010 denial of petitions to reconsider.”⁷⁰ The EPA added that “the high level of GHG emissions from fossil fuel-fired EGUs makes clear that it is rational for the EPA to regulate GHG emissions from this sector.”⁷¹

The EPA explained the legal basis for its interpretation of CAA section 111(b)(1)(A) as follows: The Agency noted that the EPA had listed fossil fuel-fired steam generators as a source category in 1971 and combustion turbines as a source category in 1979, in each case on the basis of the sources’ emissions of non-GHG air pollutants, and the EPA acknowledged that the Agency had not considered GHG emissions at the time of those listings. Even so, in the 2015 NSPS, the EPA stated that the Agency interpreted CAA section 111 to provide that after the EPA listed a source category once, the CAA authorized the Agency to promulgate NSPS for any air pollutant from a source listed in that source category, so long as the EPA had a rational basis for doing so.⁷²

The EPA received comments on the 2015 NSPS stating that CAA section 111 did not authorize regulation of GHGs from fossil fuel-fired EGUs until the Agency first makes a finding that emission of GHGs from these power plants contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA disagreed with those comments. The EPA took the position that CAA section 111(b)(1)(A), 111(b)(1)(B), and 111(a)(1), read together, authorize the Agency to regulate an air pollutant from a listed source category, subject to the standards of rationality under CAA section 307(d)(9)(A), and do not require the EPA to make an additional determination, as a predicate for regulation, that the air pollutant contributes significantly to dangerous air pollution.⁷³

⁷⁰ *Id.* at 64531; see 75 FR 49556 (August 13, 2010) (denying petitions for reconsideration of the 2009 Endangerment Finding).

⁷¹ 80 FR 64510, 64530 (October 23, 2015).

⁷² *Id.* at 64529–31.

⁷³ Promulgation of NSPS under CAA section 111(b)(1)(B) is subject to the requirements of CAA section 307(d), under CAA section 307(d)(1)(C). See 42 U.S.C. 7607(d)(1)(C).

Notwithstanding the EPA’s position in the 2015 NSPS that CAA section 111 does not require a pollutant-specific significant contribution finding for GHG emissions, the Agency purported to make, in the alternative, separate endangerment and significant contribution findings pursuant to CAA section 111(b)(1)(A) for GHG emissions from fossil fuel-fired EGUs. In doing so, the EPA asserted that the information and conclusions in the preamble to the 2015 NSPS provided a sufficient basis for such findings.⁷⁴ That is, the EPA took the position that regardless whether the Agency needed only a rational basis to regulate CO₂ emissions from fossil fuel-fired EGUs or was instead required to make new endangerment and significant contribution findings, we had made the requisite determinations based on the 2009 Endangerment Finding and the additional information presented in the preamble to the 2015 NSPS.

The 2015 NSPS promulgated standards of performance to limit emissions of GHGs, manifested as CO₂, from newly constructed, modified, and reconstructed fossil fuel-fired electric utility steam generating units (*i.e.*, utility boilers and integrated gasification combined cycle (IGCC) combustion turbines) and newly constructed and reconstructed stationary combustion turbines. These final standards are codified in 40 CFR part 60, subpart TTTT. In promulgating the 2015 NSPS for newly constructed fossil fuel-fired steam generating units, the EPA determined the BSER to be a new, highly efficient, supercritical pulverized coal (SCPC) EGU that implements post-combustion partial CCS technology.

The 2015 NSPS also included standards of performance for steam generating units that undergo a “reconstruction” as well as units that implement “large modifications” (*i.e.*, modifications resulting in an increase in hourly CO₂ emissions of more than 10 percent). The 2015 NSPS did not establish standards of performance for steam generating units that undertake “small modifications” (*i.e.*, modifications resulting in an increase in hourly CO₂ emissions of less than or equal to 10 percent), due to the limited information available to inform the analysis of a BSER and corresponding standard of performance.

The 2015 NSPS also finalized standards of performance for newly constructed and reconstructed natural gas-fired stationary combustion turbines that operate at base load and non-base load, based on efficient natural gas

⁷⁴ 80 FR 64510, 64530–31 (October 23, 2015).

⁶⁷ 80 FR 64510, 64529–30 (October 23, 2015).

⁶⁸ See *id.* at 64531.

⁶⁹ *Id.*

combined cycle (NGCC) technology or the use of lower-emitting fuels (referred to as clean fuels in the 2015 NSPS) as the BSER. The EPA did not promulgate final standards of performance for modified stationary combustion turbines under CAA section 111(d) due to lack of information.

Petitioners challenged the 2015 NSPS in the D.C. Circuit, and the case has been held in abeyance over the years since in light of the EPA's subsequent rulemakings.

In the 2015 CPP—promulgated at the same time as the 2015 NSPS—the EPA interpreted CAA section 111(d) to require the Agency to regulate GHG emissions from existing sources in the newly combined source category because we had promulgated the 2015 NSPS for GHG emissions from new sources in that source category under CAA section 111(b).⁷⁵ The Agency noted that GHGs, and CO₂ in particular, are not separately regulated under the NAAQS program under CAA sections 107–110 or the NESHAP program under CAA section 112. The EPA determined that the BSER for existing fossil fuel-fired EGUs consisted primarily of generation shifting measures, as described in section II.C of this preamble.⁷⁶ The Supreme Court stayed the 2015 CPP pending review in February 2016,⁷⁷ and the D.C. Circuit held the litigation in abeyance and ultimately dismissed the challenges to the 2015 CPP in light of subsequent developments.⁷⁸

In 2018, following a change in administration, the EPA proposed to revise the NSPS for new, modified, and reconstructed fossil fuel-fired steam generating units and IGCC units (2018 NSPS Proposal).⁷⁹ The EPA proposed to revise the NSPS for newly constructed units based on a revised BSER of a highly efficient EGU without partial CCS. The EPA also proposed to revise the NSPS for modified and reconstructed units. The EPA never finalized the 2018 NSPS Proposal, and the Agency rescinded the proposal as part of the 2024 CPS.

In 2019, the EPA repealed the 2015 CPP and replaced that rulemaking with the Affordable Clean Energy (ACE) Rule.⁸⁰ In the ACE Rule, the Agency determined that the statutory “text and reasonable inferences from it” indicate that the best “system” of emission reduction as defined in CAA section

111(a)(1) “is limited to measures that can be applied to and at the level of the individual source,” meaning the BSER must be control measures for reducing emissions at individual sources.⁸¹ The Agency concluded that generation shifting is not such a control measure.⁸² In addition, the EPA further concluded that the 2015 CPP was a “major rule” subject to the major questions doctrine and therefore must be supported by “a clear statement from Congress.” Because the statutory phrase “best system of emission reduction” does not clearly speak to generation shifting, the Agency reasoned that CAA section 111 should not be read to encompass generation-shifting measures.⁸³ To replace the 2015 CPP, the EPA promulgated as part of the ACE Rule a new set of emission guidelines for existing coal-fired steam-generating EGUs.⁸⁴ In these new emission guidelines, the EPA determined the BSER for existing coal-fired EGUs to be heat rate improvements alone. Specifically, the EPA listed various technologies that could improve heat rate and identified the “degree of emission limitation achievable” by providing ranges of expected emission reductions associated with each of the technologies.⁸⁵ The EPA also explained that we were not determining CCS as the BSER in part because of unreasonable expense and was not determining natural gas co-firing as the BSER because co-firing was an inefficient use of natural gas.⁸⁶

In 2021, a divided panel of the D.C. Circuit vacated the ACE Rule, including the repeal of the 2015 CPP.⁸⁷ The panel majority held, among other things, that CAA section 111 did not limit the EPA, in determining the BSER, to measures applied at and to an individual source and that CAA section 111 authorized the Agency to determine generation shifting is the BSER. The panel majority also rejected in the argument that generation-shifting implicated “the so-called ‘major questions’ doctrine” based on its interpretation of the Supreme Court’s decisions in *Massachusetts* and *AEP*.⁸⁸ As a result, the D.C. Circuit vacated both the repeal of the 2015 CPP and the ACE Rule.⁸⁹ The court did not

address most other challenges to the ACE Rule, including the arguments concerning the heat rate improvement BSER.

Several petitioners argued that the ACE Rule was invalid on the grounds that the EPA had predicated regulation of GHG emissions from existing EGUs on the new source GHG emissions standards in the 2015 NSPS. In addition, petitioners argued that those standards were flawed because CAA section 111 required them to be predicated on a pollutant-specific significant contribution finding with identified standards or criteria for determining significance. The D.C. Circuit held that it did not need to decide whether CAA section 111 requires a pollutant-specific significant contribution finding for GHG emissions from EGUs as a predicate for CAA section 111 regulation because the EPA had made such a finding in the alternative. The court rejected the petitioners’ argument that the significant contribution finding was flawed due to lack of identified criteria for significance and explained that the magnitude of GHG emissions from EGUs supported the significance finding without identified criteria for significance.⁹⁰

In 2022, the U.S. Supreme Court in *West Virginia* reversed the D.C. Circuit’s decision to vacate the ACE Rule’s embedded repeal of the 2015 CPP.⁹¹ As noted in section II.C of this preamble, the Supreme Court concluded that the 2015 CPP’s BSER of “generation shifting” implicated the major questions doctrine and exceeded the EPA’s statutory authority because CAA section 111 does not clearly authorize the Agency to regulate GHG emissions in a manner that forces a nationwide transition away from using coal to generate electricity.⁹²

Following the U.S. Supreme Court’s decision in *West Virginia*, the EPA informed the D.C. Circuit that the Agency intended to replace the ACE Rule.⁹³ On October 27, 2022, the D.C. Circuit took the necessary steps to, among other things, respond to the Supreme Court’s decision by ensuring that the 2015 CPP remained repealed and stay further proceedings with respect to the challenges to the ACE Rule given the EPA’s plans to replace that rule.⁹⁴

⁸¹ See *id.* at 32523–24.

⁸² See *id.* at 32546.

⁸³ See *id.* at 32529.

⁸⁴ See *id.* at 32532.

⁸⁵ *Id.* at 32535–38.

⁸⁶ *Id.* at 32545.

⁸⁷ *Am. Lung Ass’n*, 985 F.3d at 914.

⁸⁸ *Id.* at 959.

⁸⁹ *Id.* at 995. In a partial dissent, Judge Walker argued that the 2015 CPP (and aspects retained in the 2019 ACE Rule) violated the major questions doctrine because CAA section 111 does not include a clear statement of authority to regulate GHG emissions from power plants. *Id.* at 995–1003.

⁹⁰ *Id.* at 974–77.

⁹¹ *West Virginia*, 597 U.S. 697.

⁹² *Id.* at 734–35.

⁹³ *Am. Lung Ass’n v. EPA*, D.C. Cir. No. 19–1140, Motion to Govern, Doc. #196782 (October 3, 2022).

⁹⁴ *Am. Lung Ass’n v. EPA*, D.C. Cir. No. 19–1140, Order, Doc. #1970895 (October 27, 2022).

⁷⁵ 80 FR 64662, 64702 (October 23, 2015).

⁷⁶ *Id.* at 64728–29.

⁷⁷ *West Virginia v. EPA*, 577 U.S. 1126 (2016).

⁷⁸ *Am. Lung Ass’n*, 985 F.3d at 937.

⁷⁹ 83 FR 65424 (December 20, 2018).

⁸⁰ 84 FR 32520 (July 8, 2019).

B. Carbon Pollution Standards

On May 9, 2024, the EPA promulgated the CPS, which consisted of several separate actions.⁹⁵ The first action was the repeal of the ACE Rule. The EPA explained, among other things, that the suite of heat rate improvements that was identified in the ACE Rule as the BSER is not an appropriate BSER for existing coal-fired EGUs.⁹⁶

In addition, the 2024 CPS included emission guidelines for GHG emissions from existing fossil fuel-fired steam generating units, which include the separate subcategories of coal-fired units, oil-fired units, and gas-fired units.⁹⁷ For long-term coal-fired units, the EPA finalized 90 percent CCS as the BSER, with a presumptive standard of an 88.4 percent reduction in annual emission rate and a compliance deadline of January 1, 2032. The EPA asserted that 90 percent CCS is an adequately demonstrated technology that achieves significant emissions reduction and that costs are reasonable, considering the supposedly declining costs of the technology and the Internal Revenue Code (IRC) section 45Q tax credit available for a certain number of years to generating sources that use CCS technology. In recognition of the significant capital expenditures involved in deploying CCS and previously announced retirement dates for several coal-fired steam generating units, the EPA finalized a separate subcategory for existing coal-fired units that demonstrate that they plan to permanently cease operation before January 1, 2039. For this subcategory, the BSER is co-firing with natural gas at a level of 40 percent of the unit's annual heat input, the presumptive standard is a 16 percent reduction in annual emission rate, and the compliance deadline is January 1, 2030. In addition, the EPA exempted existing coal-fired units that demonstrate that they plan to permanently cease operation prior to January 1, 2032. The EPA determined that these controls were cost-effective primarily by reference to two metrics used in prior rulemakings. The first metric determines the annualized cost in dollars for each ton, or other quantity, of the regulated air pollutant removed through the system of emission

reduction. The second metric, which the EPA particularly relied on in rules for the electric power sector, determines the annualized cost of controls relative to the electricity generated by the EGU in dollars per megawatt-hour (\$/MWh) of generation.⁹⁸

For existing natural gas- and oil-fired steam generating units, the EPA further subcategorized them into base load (units with annual capacity factors greater than or equal to 45 percent), intermediate load (units with annual capacity factors greater than or equal to eight percent and less than 45 percent), and low load (units with annual capacity factors less than eight percent) subcategories. The EPA finalized routine methods of operation and maintenance as the BSER for base load and intermediate load units, with presumptive standards for base load units of 1,400 pounds (lb) CO₂/MWh-gross, and for intermediate load units of 1,600 lb CO₂/MWh-gross.⁹⁹ For low load units, the EPA finalized a uniform fuels BSER and a presumptive input-based standard of 170 lb CO₂/MMBtu for oil-fired sources and a presumptive standard of 130 lb CO₂/MMBtu for natural gas-fired sources.

The 2024 CPS also included standards of performance for new and reconstructed combustion turbines organized into three subcategories: base load, intermediate load, and low load. For base load turbines, the standard consisted of two components in two phases. The first component is based on a BSER of highly efficient generation (which was determined based on the emission rates achieved by the best performing units), and the EPA required compliance with this first component upon the effective date of the 2024 CPS. The second component is based on a BSER of 90 percent CCS, and the EPA required compliance with this second component on January 1, 2032. For intermediate load turbines, the EPA determined that highly efficient simple-cycle generation is the BSER. For low load combustion turbines, the EPA determined that the use of lower-emitting fuels is the BSER.

In addition, the EPA revised the standards of performance for coal-fired steam generating units that undertake a large modification (*i.e.*, a modification that increases the hourly emission rate of the source by more than 10 percent) to be based on the BSER of 90 percent CCS. Finally, the EPA withdrew the

2018 NSPS Proposal for GHG emissions from coal-fired EGUs.¹⁰⁰

Following promulgation of the 2024 CPS, many States and industry groups filed petitions for review in the D.C. Circuit, and many subsequently filed motions to stay the rule. The D.C. Circuit denied the stay motions on July 19, 2024,¹⁰¹ and the Supreme Court denied these motions on October 16, 2024.¹⁰² Justice Thomas would have granted a stay, and Justice Kavanaugh, joined by Justice Gorsuch, wrote that “the applicants have shown a strong likelihood of success on the merits as to at least some of their challenges to the [EPA’s] rule.”¹⁰³ The parties briefed the merits, and the D.C. Circuit held oral argument on December 6, 2024. Following a change in administration, the D.C. Circuit agreed to hold the case in abeyance pending further actions by the Agency.

C. Changes in Trends in Fossil Fuel-Fired EGUs

In the 2024 CPS, the historical data that supported the analysis that the EPA conducted and relied on to assess the rule’s projected impacts showed only incremental increases in electricity demand: a 13 percent increase between 2000 and 2022, with demand remaining relatively flat from 2007 to 2022. At the same time, the share of coal-fired electricity decreased in both relative and absolute terms, declining 58 percent and going from delivering 52 percent of total net generation in 2000 to 19 percent in 2022. Natural gas-fired net generation increased by 181 percent over this period, delivering 39 percent of net generation in 2022. The combination of wind and solar net generation grew 172 percent over this period, delivering 15 percent of total net generation in 2022. Natural gas surpassed the total net generation from coal on an absolute basis in 2016, and renewables surpassed the total net generation from coal on an absolute basis in 2022.¹⁰⁴ The information that the EPA analyzed for purposes of the 2024 CPS indicated that the sector trend of moving away from coal-fired generation was likely to continue, the

¹⁰⁰ 83 FR 65424 (December 20, 2018).

¹⁰¹ *West Virginia v. EPA*, D.C. Cir. No. 24–1120, Order, Doc. #2065493 (July 19, 2024).

¹⁰² *West Virginia v. EPA*, 145 S. Ct. 2 (2024).

¹⁰³ *Id.*

¹⁰⁴ Power Sector Trends Technical Support Document for the New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule at 5–6, Document ID No. EPA–HQ–OAR–2023–0072–8920.

⁹⁵ 89 FR 39798 (May 9, 2024).

⁹⁶ In the CPS, the EPA also withdrew the separate proposed revisions to the New Source Review (NSR) regulations that were included the ACE Rule proposal. See 83 FR 44746, 44773–83 (August 31, 2018).

⁹⁷ Although the EPA also proposed emission guidelines for GHG emissions from existing fossil fuel-fired combustion turbines in the proposed CPS, the Agency did not finalize those emission guidelines.

⁹⁸ 89 FR 39798, 39882 (May 9, 2024).

⁹⁹ “Gross” refers to the electricity generated by the EGU, as opposed to “net,” which is equivalent to the electricity delivered to the grid and accounts for the loss due to the electricity used by auxiliary equipment at the facility.

share of electricity generation from natural gas-fired sources would likely decline, and the share of generation from non-emitting technologies would likely continue to increase. In the 2024 CPS, the EPA anticipated that the recent trend of retirements of coal-fired capacity (at an average annual rate of 10 gigawatt (GW) from 2015 to 2023) would continue due to the economics of coal-fired generation. At the time of the 2024 CPS final rule, more than half of the coal-fired steam generating units in operation had announced that they would retire or convert to natural gas by 2039.¹⁰⁵

In contrast, updated information and analysis of power sector trends indicates a significantly different landscape moving forward. As noted in the June 2025 NPRM, the EPA believes that coal-fired steam generating unit capacity and generation will continue to comprise a substantial portion of the nation's electricity supply due to increasing electricity demand.¹⁰⁶ Several key factors play major roles in reshaping projections of electricity markets over the coming decades. Demand growth across the U.S. is significantly higher than prior estimates. According to the 2024 North American Electric Reliability Corporation (NERC) Long Term Reliability Assessment, peak demand remained static nationwide over the ten-year period from 2013 through 2022.¹⁰⁷ In 2022, NERC projected a 0.65 percent compound annual growth rate for summer peak demand based on the ten-year period of 2022 through 2031.¹⁰⁸ In contrast, in late 2024, NERC projected a 1.67 percent compound annual growth rate for summer peak demand based on the ten-year period of 2025 through 2034.¹⁰⁹ Increasing amounts of large commercial and industrial loads, particularly those related to data center demand for artificial intelligence (AI) applications, are primarily driving this nearly 2.6-fold increase in projected growth rates. Subnationally, these impacts are even more striking. The Electric Reliability Council of Texas' (ERCOT) 2025 long-term load

forecast projects summer peak demand rising at an 8.9 percent annual growth rate based on the six-year period of 2025 to 2031.¹¹⁰ The 2025 long-term load forecast for PJM, a regional transmission organization serving large parts of the eastern US, projects a 3.1 percent annual growth rate in summer peak demand based on the ten-year period of 2025 to 2035.¹¹¹ NERC concludes that critical reliability challenges face the sector when considering the need to meet this higher level of demand, manage ongoing thermal retirements, and develop additional transmission and support resources.¹¹² A recent Department of Energy (DOE) report, which examines reliability implications of ongoing thermal retirements in the face of projected increases in electricity demand, echoes these findings and further states that the risk of power outages may increase by a hundred fold in some instances if firm resources continue to retire in the face of projected load growth.¹¹³

The passage of the One Big Beautiful Bill Act of 2025 (OBBBA) will also have important impacts on the power sector. The phaseout of tax subsidies to wind and solar resources will likely reduce incremental builds of these technologies, particularly after 2028. This, in turn, will further increase the need for retaining existing thermal resources (including coal-fired steam generating units) and building new thermal (including new combustion turbines) resources to help meet increasing electricity demand. Considering these changes, the EPA expects the OBBBA to produce a net effect of reducing factors that boosted the economic competitiveness of wind and solar resources and improving the economic competitiveness of thermal generation (including coal and natural gas-fired generation).

Moreover, higher levels of electricity demand result in greater demand for around-the-clock power, which results in a higher utilization of coal- and gas-fired resources in the EPA's current

analysis than in the EPA's 2024 analysis underpinning the 2024 CPS.¹¹⁴ The trends the EPA has incorporated into the updated analysis result in projections that show total electricity generation will increase by approximately 15 percent by 2030 and 25 percent by 2035,¹¹⁵ significantly higher than projections in the 2024 analysis for the 2024 CPS.¹¹⁶

This recent change in demand for around-the-clock power already is effecting changes in the current market, as shown by a number of coal-fired steam generating units that are delaying or canceling their scheduled retirements due to increased electricity demand.¹¹⁷ Using the latest available data from the Energy Information Administration (EIA), in 2024, the U.S. power sector had approximately 174 GW of coal-fired EGUs that collectively consumed approximately 7.0 quadrillion British thermal units (Btus) of energy. According to data reported by the owners and operators of coal-fired capacity, the EIA expects 146 GW of this capacity to remain in service through 2032. In addition, the EIA now expects 24.5 GW of combined cycle additions and 11.5 GW of combustion turbine additions over the next five years,¹¹⁸ demonstrating a sharp increase from the August 2023 EIA data underlying the analysis of the 2024 CPS, which cited roughly 9.6 GW of combined cycle and 1.9 GW of combustion turbine additions planned for construction between 2025 and 2030.¹¹⁹

The EPA's updated projections reflect these changes.¹²⁰ As a specific example, at the end of 2024, 174 GW of coal-fired EGUs were active in the power sector

¹¹⁴ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

¹¹⁵ *Id.*

¹¹⁶ U.S. EPA. Regulatory Impact Analysis for the New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule (May 2024). Document ID No. EPA-HQ-OAR-2023-0072-8913.

¹¹⁷ Power. U.S. Coal Plants Get Reprieve as Market and Policies Change. Available at: <https://www.powermag.com/u-s-coal-plants-get-reprieve-as-market-and-policies-change>.

¹¹⁸ U.S. Energy Information Administration. EIA Power Monthly (October 2025). Available at: https://www.eia.gov/electricity/data/eia860m/xls/october_generator2025.xlsx.

¹¹⁹ U.S. Energy Information Administration. EIA Power Monthly (August 2023). Available at: https://www.eia.gov/electricity/data/eia860m/xls/august_generator2023.xlsx.

¹²⁰ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

¹¹⁰ ERCOT. 2025 System Planning Long-term Hourly Peak Demand and Energy Forecast. Available at: https://www.ercot.com/files/docs/2025/04/08/2025_LTLF_Report.docx.

¹¹¹ PJM. 2025 Long-Term Load Forecast Report. Available at: <https://www.pjm.com/-/media/DotCom/library/reports-notice/load-forecast/2025-load-report.pdf>.

¹¹² NERC 2023 Long-Term Reliability Assessment (December 2024). Available at: <https://www.nerc.com/our-work/assessments/past-reliability-assessments>.

¹¹³ U.S. Department of Energy, Resource Adequacy Report Evaluating the Reliability and Security of the United States Electric Grid (2025). Available at: <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf>.

¹⁰⁵ 89 FR 39798, 39816–18 (May 9, 2024).

¹⁰⁶ See 90 FR 25752, 25772, 25774 (June 17, 2025).

¹⁰⁷ NERC 2023 Long-Term Reliability Assessment (December 2024). Available at: https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf.

¹⁰⁸ NERC 2021 Long-Term Reliability Assessment (December 2022). Available at: <https://www.nerc.com/our-work/assessments/past-reliability-assessments>.

¹⁰⁹ NERC 2023 Long-Term Reliability Assessment (December 2024). Available at: <https://www.nerc.com/our-work/assessments/past-reliability-assessments>.

nationwide.¹²¹ In the 2024 CPS, the EPA projected that, in the baseline absent requirements, approximately 40 GW of existing coal capacity would still be active by 2040.¹²² However, the EPA has revisited the 2024 baseline in light of the information above. The EPA now projects that, absent the requirements of the 2024 CPS, approximately 100 GW of coal capacity would be active in 2040,¹²³ more than twice the capacity EPA previously projected. Similarly, in the 2024 CPS, the EPA projected approximately 26 GW of incremental NGCC capacity additions by 2035.¹²⁴ The EPA now projects, absent the requirements of the 2024 CPS, approximately 155 GW of new NGCC capacity by 2035. Based on the EPA's updated projections, informed by the recent and consequential changes in the electricity market, a much larger number of EGUs would be subject to the requirements of the 2024 CPS than previously estimated for the purposes of that rulemaking.

D. June 2025 NPRM

In June 2025, the EPA issued a NPRM that included two proposals: a primary proposal and an alternative proposal. The primary proposal would have repealed all GHG regulations for fossil fuel-fired EGUs under CAA section 111 on the basis that the source category does not significantly contribute to dangerous GHG air pollution. Specifically, the EPA proposed to conclude that CAA section 111 is best read to require, or at least authorize the EPA to require, the Administrator's determination that an air pollutant emitted by a source category causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare as a predicate to establishing emission standards for that pollutant. The EPA further proposed to determine, in a change from the 2015 NSPS and the 2024 CPS, that GHG emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution as required for the promulgation of new and existing source standards. The EPA proposed to find that the contribution of this source category is not significant because GHG

emissions from those sources are a small and decreasing part of global emissions, cost-effective control measures are not reasonably available, and this Administration's priority is to protect the environment, public health, and welfare through energy dominance and independence secured through the use of fossil fuels to generate power. On the basis of the proposed finding that GHG emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution, the EPA proposed to repeal all GHG emissions standards for the power sector under CAA section 111, specifically the 2015 NSPS (codified in 40 CFR part 60, subpart TTTT) and the 2024 CPS (codified in 40 CFR part 60, subparts TTTTa and UUUUb).

In the alternative, based largely on a review of the BSER determinations in the 2024 CPS, the EPA proposed to repeal the emission guidelines for existing steam generating units in 40 CFR part 60, subpart UUUUb, the CCS-based requirements for coal-fired steam generating units undergoing a large modification in 40 CFR part 60, subpart TTTTa, and the CCS-based phase 2 requirements for new base load combustion turbines in 40 CFR part 60, subpart TTTTa. The EPA also solicited comment, in general, on the other standards (e.g., phase 1 standards for new combustion turbines).

IV. Repeal of Sections of the Carbon Pollution Standards

The EPA is finalizing the repeal of the emission guidelines in the 2024 CPS for existing fossil fuel-fired steam generating units in 40 CFR part 60, subpart UUUUb. The EPA also is finalizing the repeal of the requirements for coal-fired steam generating units undertaking a large modification in 40 CFR part 60, subpart TTTTa and the phase 2 CCS-based requirements for new base load combustion turbine EGUs in 40 CFR part 60, subpart TTTTa. As discussed in more detail in this section of the preamble, the EPA is finalizing those repeals on the bases that (1) 90 percent CCS is not the BSER for existing long-term coal-fired steam generating units and the degree of emission limitation in the 2024 CPS is not achievable, (2) 40 percent natural gas co-firing is not the BSER for medium-term coal-fired steam generating units and the degree of emission limitation is not achievable, (3) it would be imprudent to require States to submit plans for oil- and natural gas-fired steam generating units, and (4) 90 percent CCS is not the BSER for new base load combustion turbines and the associated

standards of performance are not achievable.

The EPA acknowledges the uncertainty created by the 2024 CPS, particularly given the consequential changes to projected trends in electricity demand and generation.¹²⁵ To provide near-term relief to affected sources from the regulatory burdens of the 2024 CPS that are the cause of this uncertainty, the EPA is finalizing, based largely on the unreasonableness of the BSER determinations in the 2024 CPS, the repeal of the emission guidelines for existing steam generating units, the CCS-based requirements for coal-fired steam generating units undergoing a large modification, and the CCS-based phase 2 requirements for new base load combustion turbines.

Specifically, the EPA is finalizing the determination that 90 percent CCS is not the BSER for existing long-term coal-fired steam generating units because it has not been adequately demonstrated and because the costs are not reasonable. Furthermore, because it is unlikely the infrastructure for CCS can be deployed by the January 1, 2032 compliance date, the EPA is finalizing the determination that the degree of emission limitation in the 2024 CPS for long-term coal-fired steam generating units is not achievable. The EPA is also finalizing the determination that 40 percent natural gas co-firing is not the BSER for existing medium-term coal-fired steam generating units for several reasons. First, 40 percent natural gas co-firing cannot be BSER because 40 percent natural gas co-firing is a type of generation-shifting and is precluded by the Supreme Court's decision in *West Virginia*. Additionally, 40 percent natural gas co-firing cannot be BSER because consideration of the energy requirements shows that 40 percent natural gas co-firing has adverse consequences for the energy system. Moreover, because it is unlikely the infrastructure for 40 percent co-firing can practicably be deployed by the January 1, 2030 compliance date, the EPA is finalizing the determination that the degree of emission limitation in the 2024 CPS for medium-term coal-fired steam generating units is not achievable. Therefore, the EPA is repealing the BSER determinations, presumptive standards of performance, and all

¹²¹ U.S. Energy Information Administration, EIA Power Monthly (December 2024). Available at: <https://www.eia.gov/electricity/monthly/archive/december2024.pdf>.

¹²² U.S. EPA. RIA for 2024 CPS. Document ID No. EPA-HQ-OAR-2023-0072-8913. Table 3-14.

¹²³ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

¹²⁴ U.S. EPA. RIA for 2024 CPS. Document ID No. EPA-HQ-OAR-2023-0072-8913. Table 3-14.

¹²⁵ See, e.g., Comments of the Power Generators Air Coalition on EPA's Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil-Fuel Fired Electric Generating Units at 6, Document ID No. EPA-HQ-OAR-2025-0125-0610; Comments from the Edison Electric Institutes on the Proposed Rule Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units at 6-12, Document ID No. EPA-HQ-OAR-2025-0125-0897.

related requirements in the emission guidelines for existing long-term and medium-term coal-fired steam generating units.

Additionally, the EPA is repealing the requirements for existing natural gas- and oil-fired steam generating units because it would be an inefficient use of State resources to develop, submit, and implement state plans solely for natural gas- and oil-fired steam generating units, which comprise a relatively small part of the source category and would contribute few or no emission reductions under the existing emission guidelines. That is, it would not be reasonable for the EPA to require States to prepare plans for existing natural gas- and oil-fired steam generating units given that the Agency is repealing the requirements for existing coal-fired steam generating units.

The EPA is thus repealing the substantive requirements and, on that basis, is repealing 40 CFR part 60, subpart UUUUb—the emission guidelines for existing fossil fuel-fired steam generating units—in its entirety.

Because the EPA is determining that 90 percent CCS is not the BSER for existing long-term coal-fired steam generating units, the EPA is also repealing the CCS-based requirements for coal-fired steam generating units undertaking a large modification. The EPA is also determining that 90 percent CCS is not the BSER for new base load combustion turbine EGUs because it has not been adequately demonstrated and the costs are not reasonable. Furthermore, because it is unlikely that the infrastructure necessary for CCS can be deployed by the January 1, 2032 compliance date, the EPA is determining that the phase 2 standards of performance in the 2024 CPS for new base load combustion turbines are not achievable. Consequently, the EPA is repealing the phase 2 CCS-based requirements for new base load combustion turbine EGUs.

Although the EPA discusses each relevant repeal and the associated bases below, several observations about the 2024 CPS reinforce the fundamental issues with that prior action—and the 2015 CPP that preceded it—and support the Agency's decision to proceed with these repeals, including the repeal of standards predicated on 90 percent CCS.

First, the 2024 CPS reflected an overly restrained reading of the Supreme Court's assessment of the 2015 CPP in *West Virginia*. The EPA initially viewed that decision as barring only standards that expressly require generation

shifting.¹²⁶ Upon further consideration, the EPA now accepts that decision as holding that the Agency may not impose standards with the objective or result of generation shifting at the scale the Court found to raise a major question reserved for Congress. Information reviewed since promulgation of the 2024 CPS demonstrates that standards predicated on achieving 90 percent CCS cross that threshold. Regulated sources in the relevant subcategories (*i.e.*, coal plants) were given the choice between complying with the standards by 2032 or ceasing operations by 2032. Because, for the reasons discussed throughout this preamble, emission limitation requirements based on 90 percent CCS are not achievable, the 2024 CPS effectively requires coal plants to shut down by 2032—a form of generation shifting. Under these circumstances, retaining these aspects of the 2024 CPS would be improper.

Second, the 2024 CPS reflected an overbroad reading of CAA section 111 that did not recognize or account for limits on the EPA's ability to identify a BSER requiring the deployment of new infrastructure over a long time horizon. In promulgating the 2024 CPS, the EPA projected—based on, as discussed below, optimistic assumptions—that complex carbon capture, transmission, and injection infrastructure that did not yet exist could be deployed nationwide within seven years, and did not view the inherent uncertainties and long time horizon as a barrier to adopting, or reason not to adopt, 90 percent CCS as the BSER. Upon further consideration, the Agency concludes that the inherent difficulties in accurately projecting such large-scale deployments counsel against selecting BSERs predicated on large-scale national infrastructure buildouts years into the future, particularly given the statute's eight-year cycle for reviewing the effectiveness of promulgated standards.

Third, and relatedly, the 2024 CPS reflected an overbroad reading of CAA section 111 that did not recognize or account for the scale of the infrastructure required for compliance, including the difference between systems that sources can apply to meet the standards that apply to them and systems that require significant investment and performance by third parties. Owners and operators of power plants subject to 90 percent CCS-based

requirements are dependent on third parties to develop and operate virtually all the components of CCS. Transport and storage, in particular, differ from the types of equipment the Agency has historically selected as BSER. All relevant third parties would need to timely complete their components of the infrastructure across large geographic areas for the owners and operators to be able to implement the CCS requirements by the compliance date, and thereafter, owners and operators must rely on the continued cooperation and operation of these third parties. Upon further consideration, the EPA concludes that the scale of the necessary infrastructure, including the necessary involvement of third parties nationwide, is different in kind from control measures historically considered under CAA section 111 and counsels against selecting 90 percent CCS as BSER.

The remainder of this section details the rationale for the repeal of the emission guidelines for existing fossil fuel-fired steam generating units, the CCS-based requirements for coal-fired steam generating units undertaking a large modification, and the 2024 CCS-based requirements for new combustion turbine EGUs. The EPA carefully considered the comments received on the June 2025 NPRM in the development of this final rulemaking and the supporting rationale. The EPA discusses some of the overarching comments received on the June 2025 NPRM and provides responses in this section of the preamble.¹²⁷

Comments: The EPA received extensive comments on both the primary and alternative proposals of the June 2025 NPRM. Among the group of commenters generally in favor of the proposals, some supported finalizing the primary proposal, some supported finalizing the alternative proposal, and others supported finalizing both proposals. Among the commenters in favor of finalizing both proposals, some recommended finalizing the alternative proposal first, followed by the primary proposal, while others urged the EPA to finalize both proposals simultaneously. Other commenters opposed both proposals.

EPA Response: Based on consideration of those comments and other factors, in this final rule, the EPA is finalizing only the alternative proposal in the June 2025 NPRM—that is, the proposal to repeal the emission guidelines for existing steam generating

¹²⁶ See, e.g., US working on power plant standards for energy transition: US EPA head, July 29, 2023, available at <https://www.world-energy.org/article/34841.html> (“We are working on a proposed power plant standard in the United States that helps us to transition from heavily fossil fuel resources to clean resources. . .”).

¹²⁷ Responses to substantial comments on specific issues are addressed in the relevant sections of this preamble. Responses to additional comments are in the RTC, available in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

units and the CCS-based requirements for new base load combustion turbine EGUs and coal-fired steam generating units undertaking a large modification. This final action is based on a record-focused reevaluation of the BSER determinations for the relevant subcategories. As previously explained, the EPA is taking this final action to provide near-term relief from regulatory requirements it now finds are unlawful or otherwise unreasonable. The EPA is not, in this rulemaking, finalizing the primary proposal in the June 2025 NPRM to repeal all GHG regulations for fossil fuel-fired EGUs under CAA section 111 on the basis that the source category does not significantly contribute to qualifying air pollution. The EPA is instead issuing a supplemental proposal soliciting additional public comment on the underlying question raised in the primary basis of the June 2025 NPRM: Whether the EPA lacks statutory authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111 under the applicable statutory standard for such regulation. The primary proposal in the June 2025 NPRM sought public comment on whether fossil fuel-fired EGUs “contribute significantly” to air pollution, and the supplemental notice seeks public comment on the distinct question whether global climate change concerns satisfy the threshold requirement in CAA section 111(b)(1)(A) that the source category emissions contribute significantly to “air pollution which may reasonably be anticipated to endanger public health or welfare.” We will evaluate both proposed approaches and rationales in taking final action, as both issues—contribution and endangerment—were the subject of significant interpretive and policy changes in the 2009 Endangerment Finding and the 2015 NSPS (as retained by the 2024 CPS) that extended the Agency’s novel approach to power plant stationary sources. The EPA therefore is responding in this final rule only to comments on the alternative proposal that the Agency is finalizing—the proposal to repeal 40 CFR part 60, subpart UUUUb and certain components of 40 CFR part 60, subpart TTTTa. The EPA is not responding at this time to comments that relate solely to the June 2025 primary proposal.

Comments: Some commenters opposed to the proposal to repeal the emission guidelines and other CCS-related requirements asserted that such repeal would be unlawful because the EPA must consider alternatives to the BSER determinations and requirements

at issue and/or immediately promulgate different requirements based on alternative BSERs. Commenters asserted that the CAA requires the EPA to set standards of performance under CAA section 111(b) for GHG emissions from fossil fuel-fired power plants because they are listed as a source category under CAA section 111 and that the Agency has previously determined that such emissions contribute significantly to GHG air pollution that endangers public health and welfare. Additionally, these commenters asserted that CAA section 111(d) requires the EPA to promulgate emission guidelines for existing sources that would be subject to the standards under CAA section 111(b) if the sources were new sources. Commenters asserted that the repeal of the 2024 CPS’s emission guidelines and standards of performance at issue in this rulemaking would leave these legal mandates unfilled and that repealing these requirements without considering and/or promulgating alternative requirements based on alternative BSERs would be arbitrary and capricious.

EPA Response: The EPA disagrees with these comments. The EPA carefully considered alternatives to repeal of the emission guidelines and standards of performance (e.g., whether to revise the BSER determinations or compliance schedules for the affected sources and whether to promulgate different standards immediately) and is determining that it is not necessary to do so at this time. The EPA remains concerned that it lacks the requisite statutory authority to regulate GHG emissions from power plants in the first instance under the applicable statutory standard for regulation. Indeed, other commenters urged that the EPA must resolve this predicate question before promulgating additional or different standards. Accordingly, the EPA is exercising its discretion to proceed through multiple steps that will address the totality of the problem before it in an orderly fashion.

In a concurrently issued supplemental proposal, the EPA is proposing to find that the Agency lacks the requisite legal basis to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. These proposed bases are in addition to those presented in the primary proposal in the June 2025 NPRM and will be considered together with the bases previously presented in taking final action. If finalized as proposed, this subsequent action would abrogate any legal requirement and authority to replace the BSER determinations and associated requirements that the EPA is repealing

in this final rule. Such action would render it inappropriate and unnecessary to promulgate any alternative BSER determinations, standards of performance, or compliance schedules. Conversely, if the EPA determines that it has the requisite statutory authority, the Agency would conduct additional analyses and propose any necessary and appropriate additional requirements for the fossil fuel-fired EGU source category at that time, having confirmed its statutory basis for doing so.

As a general matter, “[n]othing prohibits federal agencies from moving in an incremental manner.”¹²⁸ The EPA notes that CAA section 111 contemplates that the Agency need not immediately promulgate standards upon listing a source category and that review of regulations for a previously listed source category occurs on an eight-year cycle. Moreover, CAA section 111(b)(1)(B) does not require the Agency to regulate all types of emissions simultaneously, and CAA section 111(d) does not provide a deadline for promulgating emission guidelines. Even with respect to source categories for which no regulations exist, Congress previously provided a prioritization scheme in CAA section 111(f) under which the EPA was required to promulgate such regulations over the course of a six-year period. The EPA has consistently taken the position that it need not, in any particular CAA section 111 rulemaking, address all potential issues relevant to the at-issue source category. This final action does not repeal all requirements applicable to the fossil-fuel fired EGU source category, and as noted elsewhere in this preamble, nothing in this final action disturbs criteria pollutant emission standards applicable to power plants regulated under pre-2015 listings.

Thus, the EPA need not analyze and promulgate alternative BSERs and associated requirements to address serious issues identified with certain existing standards. In this context, this final rule simply represents a permissible first step in a multi-step process.¹²⁹ As noted above, the EPA is

¹²⁸ *Fox Television Stations*, 556 U.S. at 522; see, e.g., *Pub. Safety Spectrum All. v. FCC*, No. 24–1363, slip op. 20 (D.C. Cir. July 21, 2026) (it was reasonable for the FCC to defer making relevant decisions to a subsequent action).

¹²⁹ See *Grand Canyon Air Tour Coal. v. FAA*, 154 F.3d 455, 471 (D.C. Cir. 1998) (“ordinarily, agencies have wide latitude to attack a regulatory problem in phases and . . . a phased attack often has substantial benefits”); *Las Vegas v. Lujan*, 891 F.2d 927, 935 (D.C. Cir. 1989) (upholding agency action that was a first step toward a “complete solution,” stating that “agencies have great discretion to treat a problem partially”); *Nat’l Ass’n of Broadcasters v. FCC*, 740 F.2d 1190, 1210 (D.C. Cir. 1984) (it is

taking this first step to provide near-term relief from 2024 CPS requirements that it is now determining to be unlawful or otherwise unreasonable and which, absent further action, would imminently begin forcing the expenditure of significant resources. Promulgation of alternative BSERs or compliance schedules at this time would require completing multiple additional steps, including resolving questions regarding the Agency's statutory authority and analyzing competing alternative BSERs and requirements, all of which would delay resolution of the distinct issues addressed in this rulemaking and defeat the purpose of resolving these distinct issues before regulated sources are put to the choice between expending significant resources to comply, or planning to close, before the current 2032 compliance deadline (or other upcoming compliance deadlines, as applicable).

The EPA does not believe its repeal of certain 2024 CPS standards and requirements runs afoul of case law such as *Regents of the University of California* and *State Farm*. These cases stand for the proposition that when an agency "rescinds a prior policy its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'" ¹³⁰ In concluding that the CAA and general principles of administrative law do not require the EPA to analyze and promulgate alternative, replacement BSER determinations or requirements immediately and as part of this discrete repeal, the Agency again emphasizes that this action is the first step in what is intended to be a multi-step rulemaking process. If the second step of this process is finalized as proposed, the "existing policy" will be mooted based on the lack of legal basis for that policy in the first instance. The EPA is thus not promulgating new standards for existing coal-fired steam generating units or for new base load combustion turbines in this final rule, and, accordingly, need not develop alternative BSER determinations to support such new and additional standards.

In analyzing this aspect of the problem, the EPA reviewed the alternatives it considered prior to selecting the BSER and standards

finalized in the 2024 CPS to examine the scope and nature of possible regulatory alternatives. The Agency believes that its prior consideration and rejection of other potential BSERs in the 2024 CPS rulemaking demonstrates that further analyzing additional alternative BSERs and requirements would be unnecessary under the circumstances here. In the 2024 CPS, the EPA considered and rejected a range of potential alternatives to the BSERs ultimately selected. For long-term coal-fired steam generating units now subject to standards based on 90 percent CCS, the EPA considered partial CCS at lower capture rates, natural gas co-firing, and heat rate improvements.¹³¹ The EPA rejected partial CCS "because it achieves substantially fewer unit-level reductions at greater cost, and because CCS at 90 percent is achievable."¹³² The Agency also noted that "the IRC section 45Q tax credit may not be available to defray the costs of partial CCS and the emission reductions would be limited."¹³³ As explained in section IV.A.1 of this preamble, the EPA now rejects the conclusion that 90 percent CCS is adequately demonstrated and achievable and further finds that the IRC section 45Q tax credit should not be accounted for when evaluating the reasonableness of the costs of the BSER. The EPA therefore believes the costs of partial CCS would be significantly higher than anticipated in the 2024 CPS and therefore remains an inappropriate alternative. With regard to natural gas co-firing as an alternative to 90 percent CCS, as discussed in section IV.A.2 of this preamble, the EPA is determining in this final rule that this control strategy amounts to impermissible generation shifting, thereby disqualifying it from being the BSER. And the EPA explained in the 2024 CPS that it was not finalizing heat rate improvements as the BSER "because of the limited reductions and potential rebound effect."¹³⁴ Similarly, for medium-term coal-fired EGUs, the 2024 CPS considered CCS and heat rate improvements as potential BSERs and rejected each.¹³⁵ Thus, based on the EPA's earlier assessments and the further analysis conducted for purposes of this final rule, potential alternatives to 90 percent CCS for long-term coal-fired units and 40 percent natural gas co-firing for medium-term coal-fired units are not obvious and suffer from their own shortcomings. As noted

above, fully analyzing and working through these issues is a distinct task that warrants a distinct process that would be most appropriate to undertake after, and pending the results of, the Agency's consideration of the scope of its statutory authority.

For new base load combustion turbines, the 2024 CPS included consideration of potential alternative BSERs including lower-emitting fuels, high efficiency generation, and hydrogen co-firing.¹³⁶ In the 2024 CPS, the EPA explained that lower-emitting fuels are not the BSER for new base load combustion turbines because they would achieve few emission reductions.¹³⁷ And the EPA further explained that, "[i]n light of public comments and additional analysis, uncertainties regarding projected costs prevent the EPA from determining that low-GHG hydrogen is a component of the BSER at this time."¹³⁸ This previous evaluation of potential alternative BSERs in the 2024 CPS corroborates the EPA's conclusion in this rulemaking that it is not necessary for the Agency to consider alternatives to repeal of the 90 percent CCS, phase 2 BSER for new base load combustion turbines.

Comments: Some commenters asserted that the EPA's proposed repeal of the 2024 CPS failed to consider the disbenefits of that proposal, namely, forgone emissions reductions. One commenter noted that the standards the Agency was proposing to repeal would reduce CO₂ emissions by 1.38 billion metric tons over roughly two decades. The commenter further stated that the standards the EPA was proposing to repeal would also secure reductions of tens of thousands of tons of particulate matter, sulfur dioxide, and nitrogen oxide emissions. Commenters argued that the Agency had failed to consider the public health benefits of the 2024 CPS and the corresponding disbenefits of repealing certain requirements of that rule, and that this purported oversight rendered the proposed repeal inconsistent with the Administrative Procedure Act and the CAA.

EPA Response: The EPA disagrees with these comments. The Agency acknowledges that CO₂ emission reductions are a relevant consideration in making BSER determinations under a regulatory framework that addresses GHG emissions from the affected sources. The EPA also recognizes that this action to repeal requirements of the 2024 CPS forgoes the CO₂ emission reductions that were projected to be

reasonable for an agency to "defer resolution of issues raised in a rulemaking even when those issues are 'related' to the main ones being considered"; the inquiry into when agencies may defer resolution of issues raised in a rulemaking to a subsequent action is "a pragmatic one").

¹³⁰ *Regents*, 591 U.S. at 30 (quoting *State Farm*, 463 U.S. at 51).

¹³¹ 89 FR 39798, 39846 (May 9, 2024).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 39895–96.

¹³⁶ *Id.* at 39924.

¹³⁷ *Id.*

¹³⁸ *Id.* at 39939.

achieved under the 2024 CPS. However, the EPA emphasizes that the repeal of the 2024 CPS requirements is based on the Agency's technical determinations that 90 percent CCS and 40 percent natural gas co-firing do not satisfy certain threshold legal criteria to be eligible to be the BSER. For 90 percent natural gas co-firing, the EPA is determining, among other things, that CO₂ capture at this rate is not adequately demonstrated; the Agency is also determining that 40 percent natural gas co-firing is impermissible generation shifting. Because each of these determinations disqualifies the emissions control strategy from further consideration, the amount of CO₂ emission reductions available through implementation of these strategies cannot compel a different outcome. Further, as discussed in the relevant subsections of this preamble, many of the selected control strategies underlying the at-issue 2024 CPS requirements are infeasible, and the EPA has significantly revised its projections and analysis in the 2024 CPS with respect to the timeline for implementation. These issues mean that the emissions reductions projected in the 2024 CPS were not likely to come to fruition in any event absent outcomes inconsistent with the CAA (*i.e.*, forced plant closures because compliance by the applicable deadline is not possible).

Separately, the EPA is also determining that the cost of 90 percent CCS is unreasonable and that the energy impacts associated with 40 percent co-firing are unreasonable. The amount of CO₂ emission reductions is relevant to the balancing of the BSER factors, which also include cost and nonair quality health and environmental impacts and energy requirements. As explained in this section of the preamble, the EPA has considered the available emission reductions associated with 90 percent CCS and 40 percent natural gas co-firing and is finding that, on balance, these emission control strategies are unreasonable. Furthermore, as explained in section IV.3 of this preamble, the EPA is repealing the requirements for oil and natural gas-fired steam generating units in part because the BSERs for these units in the 2024 CPS would not have achieved appreciable CO₂ emission reductions. The EPA has thus considered the foregone CO₂ emission reductions and determined that its action is reasonable notwithstanding.

While the EPA acknowledges that the 2024 CPS would have also resulted in reductions of co-pollutants including particulate matter, sulfur dioxide, and nitrogen oxides, reductions of these

pollutants in the 2024 CPS, or foregone emission reductions of these pollutants in this action, did not factor into the Agency's BSER determinations for the regulated pollutant—CO₂—emitted from the regulated sources. And even if the EPA were to consider these incidental reductions of co-pollutants, the Agency would determine that the costs and energy impacts of the controls should be weighted more heavily than those foregone reductions.

The EPA's consideration of foregone emission reductions together with costs in relation to projections in the 2024 CPS is consistent with the Supreme Court's statement in *Michigan v. EPA*, 576 U.S. 743 (2015), that "reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions."¹³⁹ That is, the EPA has considered the reductions that the 2024 CPS would have achieved in CO₂ emissions, as well as the reductions in the other pollutants emitted by power plants, including particulate matter, sulfur dioxide, and nitrogen oxides. The EPA has also considered the health impacts of reducing emissions of these pollutants. Those emissions reductions and health impacts are noted in section V.A of this preamble. However, the EPA believes that any benefits from them are outweighed by the costs of the 2024 CPS, including the costs to the industry (and, in many instances, to the ratepayers who will absorb those costs through higher electricity bills) of complying with the requirements, as also noted in section V.A of this preamble, as well as the adverse energy impacts of using natural gas for co-firing, as noted in section IV.A.2.a of this preamble. In the EPA's view, this relative weighting is confirmed by the uncertainty of actually achieving the benefits attributed to the 2024 CPS, in light of the record and legal deficiencies in the 2024 CPS's determination of CCS and co-firing as BSER, as noted in sections IV.A.1 and IV.A.2 of this preamble. Accordingly, the EPA believes that today's action to repeal the 2024 CPS is reasonable and consistent with the *Michigan* statement cited above concerning reasonable regulation.

A. Repeal of the Emission Guidelines for Existing Fossil Fuel-Fired Steam Generating Units

This section details the rationale for the repeal of the emission guidelines for existing fossil fuel-fired steam generating units.

1. CCS-Based Requirements for Long-Term Existing Coal-Fired Steam Generating Units

In the 2024 CPS, the EPA determined the BSER for long-term coal-fired steam generating units to be 90 percent CCS. The EPA premised that BSER specifically on 90 percent CO₂ capture using an amine solvent-based system, CO₂ transport through a pipeline, and geologic sequestration of the CO₂ in a saline reservoir. In the 2024 CPS, the EPA argued that 90 percent CCS, including the 90 percent CO₂ capture component, was adequately demonstrated. The EPA further argued that 90 percent CCS satisfied the other criteria for BSER, including that costs were reasonable based on counting the IRC section 45Q as a reduction in the cost to the affected source of 90 percent CCS. Based on application of the 90 percent CCS BSER to the affected sources, the EPA established a degree of emission limitation and argued this was achievable by the compliance date of January 1, 2032, considering the time necessary to deploy capture equipment, transport, and sequestration.

The EPA proposed to repeal the requirements for long-term coal-fired steam generating units based largely on a reassessment of the record for the 2024 CPS. Specifically, the EPA proposed that 90 percent CO₂ capture, and therefore 90 percent CCS as a whole, have not been adequately demonstrated. The EPA further proposed that the average unit-level costs of 90 percent CCS were unreasonable. In the June 2025 NPRM, the EPA evaluated the average unit level costs assuming a lower capacity factor of the host EGU and operation beyond the 12-year period of availability of the IRC section 45Q tax credit. The reduced amount of CO₂ that would be captured and eligible for the IRC section 45Q tax credit resulted in higher costs than in the 2024 CPS. The EPA further proposed that the IRC section 45Q should not be counted as a reduction in the costs of 90 percent CCS. Finally, the EPA proposed that the degree of emission limitation in the 2024 CPS is not achievable because it is unlikely that the infrastructure (including the capture system, pipelines, and sequestration) for CCS can be deployed by the January 1, 2032 compliance date.

The EPA has reassessed the record underlying the 2024 CPS. The EPA is finalizing the determination that CCS with 90 percent capture is not the BSER for long-term existing coal-fired steam generating units because 90 percent CO₂ capture and, therefore, 90 percent CCS have not been adequately demonstrated

¹³⁹ *Michigan*, 576 U.S. at 753 (emphasis in original).

and the costs are unreasonable. Additionally, the capture, pipeline, and sequestration infrastructure necessary for 90 percent CCS for the fleet of existing coal-fired steam generating units does not currently exist and would need to be broadly deployed. It is unlikely the infrastructure necessary for CCS can be deployed by the January 1, 2032 compliance date, and the EPA is therefore finalizing the determination that the degree of emission limitation in the 2024 CPS for long-term coal-fired steam generating units is not achievable. Consequently, for the reasons explained in the June 2025 NPRM¹⁴⁰ and discussed below, the EPA is finalizing the repeal of the requirements in the emission guidelines pertaining to long-term existing coal-fired steam generating units.

a. Adequately Demonstrated

CCS with 90 percent capture involves the capture of 90 percent of the CO₂ emissions from the EGU, compression and transport of the captured CO₂ via pipeline, and sequestration in geologic storage. Due to the relatively low concentration of CO₂ in the flue gas, an amine solvent-based capture system is better suited for application to the post-combustion flue gas of fossil fuel-fired EGUs than other CO₂ removal technologies (e.g., pressure-swing adsorption). CO₂ removal occurs by reactive absorption of the CO₂ from the flue gas into the amine solution in an absorption column. The amine reacts with CO₂ but will also react with impurities in the flue gas, including sulfur dioxide (SO₂). Particulate matter (PM) will also affect the capture system. Adequate removal of SO₂ and PM prior to the CO₂ capture system is therefore necessary. After pretreatment of the flue gas with conventional SO₂ and PM controls, the flue gas goes through a quencher to cool the flue gas and remove further impurities before the CO₂ absorption column. After absorption, the CO₂-rich amine solution passes to the solvent regeneration column, while the treated gas passes through a water and/or acid wash column to limit emission of amines or other byproducts. In the solvent regeneration column, the solution is heated (using steam) to release the absorbed CO₂. The released CO₂ is then compressed and transported to a sequestration site. In an integrated CO₂ capture system, steam and electricity for the capture process are provided by the host-EGU; this avoids the need to capture additional emissions from any auxiliary boilers or cogeneration units.

In the 2024 CPS, the CO₂ capture component of the 90 percent CCS BSER was premised on an integrated amine solvent-based CO₂ capture system with 90 percent removal of CO₂ from the post-combustion flue gas of the host EGU. The EPA previously argued that such a system was adequately demonstrated.

The EPA has reevaluated the record and is determining in this final rulemaking that, critically, 90 percent capture of the CO₂ from flue gas of an EGU has not been adequately demonstrated. As a result, 90 percent CCS has not been adequately demonstrated and cannot be the BSER for long-term coal-fired steam generating units. The EPA is basing this conclusion primarily on a revised evaluation of the record in the 2024 CPS, as detailed in this section of the preamble.¹⁴¹ The EPA is additionally considering several developments since the EPA promulgated the 2024 CPS (e.g., changes in the plans of certain CCS projects).

In the 2024 CPS, the emission guidelines required States to establish plans that would require long-term existing coal-fired steam generating units to achieve an annual standard of performance based on capturing 90 percent of the unit's total CO₂ emissions. However, the record for 90 percent capture as adequately demonstrated did not include an example of a commercial scale coal-fired steam generating unit that was already capturing 90 percent of its annual CO₂ emissions. Instead, the EPA attempted to argue that 90 percent capture has been adequately demonstrated based on other evidence for the technology at that time. Specifically, the EPA relied primarily on evidence that consisted of the operation of the CO₂ capture system at Boundary Dam Unit 3, fixes applied at Boundary Dam Unit 3, and testing on new solvents from different vendors.¹⁴² Consequently, the EPA extrapolated from that combination of primary evidence to determine that 90 percent capture would perform as anticipated for the affected sources. On that basis, the EPA concluded that 90 percent capture was adequately demonstrated

for existing coal-fired steam generating units.

The only datapoint for commercial scale post-combustion CCS on a fossil fuel-fired EGU, with integrated steam and power, is Boundary Dam Unit 3. However, between 2014 and 2022, the capture system at Boundary Dam achieved a total capture efficiency of not more than 63 percent over the course of a calendar year.¹⁴³ This total annual capture efficiency is substantially below the 90 percent capture level specified by the BSER. While the EPA had acknowledged the challenges and underperformance of the capture system at Boundary Dam in the 2024 CPS, the Agency asserted that fixes were available or could be made to address those issues. However, many of those fixes were already made, and performance remained below the design capture efficiency.¹⁴⁵ The EPA also previously argued that new solvents were available that could capture CO₂ at higher rates to address these gaps.¹⁴⁶ However, in the 2024 CPS, the EPA failed to reasonably account for potential underperformance of capture systems using new solvents, and the experience at Boundary Dam shows it would be reasonable to anticipate that such capture systems would similarly underperform.¹⁴⁷ Furthermore, the EPA also failed to account for any decrease in operating-availability of capture, even though the annual operating-availability of the capture system at Boundary Dam has been less than 100 percent.¹⁴⁸ In combination, a capture system would achieve much less than 90 percent total capture efficiency. On review, the EPA's

¹⁴³ Here, total capture efficiency is equivalent to the mass of CO₂ captured relative to (i.e., divided by) the mass of CO₂ that the EGU would otherwise emit (including the mass of CO₂ produced in the combustion chamber of the EGU plus the mass of CO₂ produced by any auxiliary equipment that supports the capture process) over a given period (e.g., annual).

¹⁴⁴ Jacobs, B., et al. Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies* (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁴⁵ The most recently reported total capture efficiency when operating was 83 percent on an instantaneous basis. Accounting for periods when the capture system is offline, the total annual capture efficiency would be lower.

¹⁴⁶ 95 percent total capture on an instantaneous basis, not accounting for uncertainty in real-world operation or availability.

¹⁴⁷ As the only commercial scale and long-term application of CO₂ capture on a fossil fuel-fired EGU, Boundary Dam's underperformance is a reasonable quantification of potential underperformance.

¹⁴⁸ Between 2015–2022, the availability of the capture system relative to the EGU was, at best, 94 percent.

¹⁴⁰ 90 FR 25752, 25769–73 (June 17, 2025).

¹⁴¹ See *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038 (D.C. Cir. 2012) ("EPA did not rely on new facts, but rather on a reevaluation of which policy would be better in light of the facts Fox makes clear that this kind of reevaluation is well within an agency's discretion." (citing 556 U.S. at 514–15)).

¹⁴² The EPA also included other, secondary observations (e.g., projects in development) that would be insufficient on their own to conclude 90 percent capture is adequately demonstrated.

prior extrapolation fails to support CCS with 90 percent capture as adequately demonstrated. The EPA's other tangential arguments in the 2024 CPS similarly fail to show that 90 percent capture has been adequately demonstrated (including projects in development, as discussed in section IV.A.1.a.iv of this final rule preamble). Considering these factors, the EPA is finalizing the determination that CCS with 90 percent capture and, consequently, 90 percent CCS are not adequately demonstrated for existing coal-fired steam generating units. The following subsections provide further explanation.

i. Extrapolation From Boundary Dam Unit 3

In the 2024 CPS, the EPA based the determination that 90 percent CO₂ capture was adequately demonstrated on the record for amine-solvent CO₂ capture.¹⁴⁹ Thus, the EPA relied heavily on the operation of carbon capture at the commercial scale 110 megawatt (MW) coal-fired Boundary Dam Unit 3 (Saskatchewan, Canada) to demonstrate 90 percent capture. Boundary Dam has operated CCS since 2014. The unit uses Shell's amine-based CANSOLV® solvent technology to capture CO₂ from the post-combustion flue gas of the coal-fired boiler.¹⁵⁰ Captured CO₂ is then compressed, transported by pipeline, and used for enhanced oil recovery (EOR) or stored in a saline aquifer at the Aquistore site.¹⁵¹ While Boundary Dam Unit 3 achieved 89.7 percent capture over a 3-day test early in its operation, longer-term capture levels have been lower.¹⁵² Between 2015 and 2022, Boundary Dam achieved a total capture efficiency of not more than 63 percent in a calendar year.¹⁵³ This total long term capture efficiency is substantially below the 90 percent capture efficiency of the BSER.

This lower total capture efficiency is due to, among other things, the capture

system at Boundary Dam Unit 3 typically processing less than all of the flue gas, in part to "maintain long-term reliable operation."¹⁵⁴ Prior to 2023, the CO₂ capture system at Boundary Dam Unit 3, when operating, processed up to approximately 75 percent of the flue gas with 90 percent CO₂ capture from the processed flue gas.¹⁵⁵ The EPA argued in the 2024 CPS that such capture from the majority of the flue gas supported the determination of 90 percent capture from all of the flue gas as adequately demonstrated; however, this ignores that the total capture efficiency was substantially less than the 90 percent design capture efficiency.

Additionally, Boundary Dam Unit 3 has experienced various technical challenges that have reduced its performance.¹⁵⁶ These include fouling of the CO₂ absorber due to PM (fly ash), buildup of scale on heat exchangers, biological fouling in the wash-water section of the CO₂ absorber, foaming of the amine solvent in the CO₂ absorber, and damage to the CO₂ compressor. Fouling in the CO₂ absorber affects the throughput of the process by increasing the pressure drop (*i.e.*, difference in pressure between the bottom and top of the absorber) such that it cannot be overcome by the draft fans (*i.e.*, more energy is required to move the same volume of flue gas than the fans are designed to provide). Boundary Dam Unit 3 has implemented improvements to its particulate controls (electrostatic precipitator) and added more spray-wash systems to mitigate fouling due to fly ash. Caustic shocking of the wash-water section can reduce the buildup of biological material. Buildup of scale on heat exchangers reduces throughput by increasing pressure drop, while the layer of scale reduces the rate of heat transfer. To address this issue, redundant heat exchangers with isolations were installed in 2017 to allow for removal of scale without shutting down the CO₂ capture system. Finally, damage to the CO₂ compressor

caused by a loose bolt, and issues with a leaking intercooler in the compressor, forced the CO₂ capture system to be offline for several months in 2021 and the start of 2022. While the compressor was repaired, the unit lacks a redundant compressor in the event of a similar outage. Importantly, despite these attempts to improve operation, the unit continues to underperform. Furthermore, outages to address these issues have contributed to a lower total capture efficiency.

Comments: Some commenters agreed that Boundary Dam Unit 3 does not support 90 percent capture as adequately demonstrated. Commenters noted the low total capture efficiency achieved by the unit over time and the challenges faced by the unit. Other commenters argued Boundary Dam Unit 3 does support 90 percent capture as adequately demonstrated because of the capture rate from the processed flue gas and the fixes to the unit.

EPA Response: In approximately 2024, SaskPower made additional improvements at Boundary Dam Unit 3 to increase throughputs, and SaskPower noted that the capture system was processing a greater portion of the flue gas (up to 95 percent of the flue gas, with 87 percent capture from the processed flue gas, resulting in 83 percent total capture when operating).¹⁵⁷ SaskPower has not reported whether Boundary Dam Unit 3 has maintained that performance in the long term.¹⁵⁸ Notably, at those higher throughputs, the capture efficiency from the processed flue gas is lower. Moreover, even with those improvements, Boundary Dam continues to operate with capture efficiencies below design specification. Therefore, the fixes applied at Boundary Dam Unit 3 do not support 90 percent capture as adequately demonstrated.

Additionally, the operating-availability of the capture system at Boundary Dam Unit 3 has been less than 100 percent.¹⁵⁹ Between 2015 and 2022, annual operating-availability of the capture plant relative to the EGU varied

¹⁴⁹ 89 FR 39798, 39848 (May 9, 2024).

¹⁵⁰ Giannaris, S., *et al.* SaskPower's Boundary Dam Unit 3 Carbon Capture Facility—The Journey to Achieving Reliability. *Proceedings of the 15th International Conference on Greenhouse Gas Control Technologies* (2021). Available at: <http://dx.doi.org/10.2139/ssrn.3820191>.

¹⁵¹ Aquistore. Available at: <https://ptrc.ca/aquistore>.

¹⁵² SaskPower Annual Report (2015–16). Available at: <https://www.saskpower.com/-/media/saskpower/about-us/reports/past-reports/report-annualreport-2015-16.pdf>.

¹⁵³ Jacobs, B., *et al.* Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁵⁴ SaskPower. "Docket ID No. EPA-HQ-OAR-2023-0072: SaskPower Correction of Reference to Boundary Dam Unit 3 Emissions Performance in Proposed Rule" (August 4, 2023). Document ID No. EPA-HQ-OAR-2023-0072-0687.

¹⁵⁵ Jacobs, B., *et al.* Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁵⁶ Jacobs, B., *et al.* Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁵⁷ U.S. EPA, "Meeting with SaskPower to Discuss CCS at Boundary Dam Unit 3" (January 18, 2024). Document ID No. EPA-HQ-OAR-2023-0072-8906.

¹⁵⁸ Status updates from Boundary Dam from the second quarter of 2022 onward report average daily capture rates on a metric tons per day basis, capture system availability, and emissions intensity. Capture efficiency is not reported. See SaskPower. BD3 Status Update: Q4 2024. Available at: <https://saskpower.com/about-us/our-company/blog/2025/bd3-status-update-q4-2024>.

¹⁵⁹ Here, operating-availability is the percent of time that the capture system is operating relative to the time that the EGU is operating.

between 58 and 94 percent.¹⁶⁰ In 2023, the average quarterly operating-availability of the capture plant was approximately 85 percent.¹⁶¹ Operating-availability remained at this level in 2024.¹⁶² Lower operating-availabilities further contribute to lower total capture efficiencies.

The total capture efficiency at Boundary Dam Unit 3 has been less than 90 percent because the capture system has not processed all the flue gas. Also, the capture efficiency is still less than 90 percent when the capture system is operating even after applying fixes. Additionally, the operating-availability of the capture system is less than 100 percent. Considering this, the EPA concludes that the experience at Boundary Dam Unit 3 does not support 90 percent CCS as adequately demonstrated. Furthermore, the capacity of Boundary Dam Unit 3 is less than the capacity of the average U.S. coal-fired steam generating unit of approximately 430 MW. Because CCS at Boundary Dam Unit 3 underperformed at 110 MW, the EPA concludes that 90 percent capture would similarly underperform at any units greater than 25 MW, including larger units.

In the 2024 CPS, the EPA argued that new solvents achieving 95 percent capture efficiency were evidence that 90 percent capture was adequately demonstrated. However, the EPA failed to reasonably account for the performance that could be achieved in practice. The only datapoint for commercial scale post-combustion CCS on a fossil fuel-fired EGU, with integrated steam and power, is Boundary Dam Unit 3. As noted in the June 2025 NPRM, it would be reasonable to anticipate that a capture system using a new solvent would underperform to a similar degree as Boundary Dam.¹⁶³ A capture system using a new solvent, even in a process designed to achieve 95 percent capture on an instantaneous basis, would achieve just 66 percent total capture efficiency and still fail to achieve 90 percent capture if the capture system using a new solvent performed

proportionately to Boundary Dam's best annual performance.¹⁶⁴ Even under more optimistic circumstances, assuming Boundary Dam's best annual operating-availability and that a new solvent capture system performs proportionally to Boundary Dam's recent performance, the resulting total annual capture efficiency would be only 82 percent.¹⁶⁵ In combination, a capture system would achieve much less than 90 percent total capture efficiency. On review, the EPA's prior extrapolation fails to support CCS with 90 percent capture as adequately demonstrated. Considering these factors, the EPA is finalizing the determination that CCS with 90 percent capture is not adequately demonstrated for existing coal-fired steam generating units.

ii. CO₂ Capture at Other Coal-Fired Steam Generating Units

In the 2024 CPS, to support the determination of 90 percent capture as adequately demonstrated, the EPA cited other applications of CCS at coal-fired steam generating units. These included CO₂ capture at the Argus Cogeneration Plant (Trona, California), at AES's Warrior Run (Cumberland, Maryland) and Shady Point (Panama, Oklahoma) plants, and at Plant Barry's (Mobile, Alabama) 25 MWe (megawatt-equivalent) project.¹⁶⁶ These projects were not of an equivalent size to commercial scale or, in the case of the Argus Cogeneration Plant, captured far less than 90 percent of CO₂. These earlier examples would have informed the design of the capture system at Boundary Dam Unit 3. However, the lessons learned from such projects failed to limit the underperformance of the CO₂ capture system at Boundary Dam. Consequently, they do not mitigate the anticipated underperformance in the extrapolation of 90 percent CCS and cannot support

90 percent capture as adequately demonstrated.

In the 2024 CPS, the EPA also cited the Petra Nova project at W.A. Parish Unit 8 (Thompsons, Texas). The Petra Nova project began operation in 2017, and the owner put the facility into reserve shutdown (*i.e.*, idled) in May 2020, citing the poor economics of utilizing captured CO₂ for EOR at that time. On September 13, 2023, the carbon capture facility at Petra Nova restarted.¹⁶⁷ A final report from the National Energy Technology Laboratory (NETL) details the challenges that the project faced over an initial 3-year period, including leaks from heat exchangers, build-up of slurry and solids on the flue gas blower, and build-up of scale on various components.¹⁶⁸ Petra Nova captured on average 92.4 percent of the CO₂ from the 240 MWe flue gas processed over a 3-year period while operating. However, that does not account for emissions during outages of the CO₂ capture system. Maintenance to address outages directly attributable to the CO₂ capture facility was approximately 10 percent of the year on average over that timeframe. Accounting for those outages alone would, approximately, result in a total capture efficiency of 83.2 percent. Furthermore, Petra Nova processes a 240 MWe portion of the flue gas from the 610 MW W.A. Parish Unit 8. At full load, that would equate to a capture efficiency of approximately 36 percent of the emissions from the coal-fired steam generating unit.¹⁶⁹ With 10 percent outages, this would be reduced further to 32.4 percent. Additionally, the 90 percent CCS BSER in the 2024 CPS was premised on the CO₂ capture plant using integrated steam and electricity from the host EGU. However, Petra Nova uses an auxiliary natural gas-fired combustion turbine cogeneration unit to provide steam and electricity to the CO₂ capture process, and the system does not capture the CO₂ emissions from the auxiliary cogeneration unit. This design is inconsistent with the premise of the CCS BSER in the 2024 CPS. A system consistent with the premise of the BSER uses integrated steam and power and would need to meet the electricity and steam load requirements of the capture process. Furthermore, accounting for

¹⁶⁰ Jacobs, B., *et al.* Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁶¹ SaskPower. BD3 Status Update: Q4 2023. Available at: <https://www.saskpower.com/about-us/our-company/blog/2024/bd3-status-update-q4-2023>.

¹⁶² SaskPower. BD3 Status Update: Q4 2024. Available at: <https://www.saskpower.com/about-us/our-company/blog/2025/bd3-status-update-q4-2024>.

¹⁶³ 90 FR 25752, 25769 (June 17, 2025).

¹⁶⁴ 95 percent design capture × (63 percent total annual capture/90 percent design capture) = 66 percent total annual capture efficiency. Between 2015 and 2022, Boundary Dam Unit 3 achieved a total annual capture efficiency of not more than 63 percent. See Jacobs, B., *et al.* Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁶⁵ 94 percent availability × 95 percent design capture × (83 percent total capture/90 percent design capture) = 82 percent total annual capture efficiency.

¹⁶⁶ Dooley, J.J., *et al.* "An Assessment of the Commercial Availability of Carbon Dioxide Capture and Storage Technologies as of June 2009." U.S. DOE, Pacific Northwest National Laboratory, under Contract DE-AC05-76RL01830. (2009). Available at: <https://doi.org/10.2172/967229>.

¹⁶⁷ JX Nippon Oil & Gas Exploration Corporation. *Restart of the large-scale Petra Nova Carbon Capture Facility in the U.S.* (September 2023). Available at: https://www.eneos-xplora.com/english/newsrelease/upload_files/20230913EN.pdf.

¹⁶⁸ W.A. Parish Post-Combustion CO₂ Capture and Sequestration Demonstration Project, Final Scientific/Technical Report (March 2020). Available at: <https://www.osti.gov/servlets/purl/1608572>.

¹⁶⁹ 90 percent × 240 MWe / 610 MW = 36 percent.

emissions from the auxiliary cogeneration unit would lower the capture efficiency at Petra Nova further. In the 2024 CPS, by ignoring the emissions from the auxiliary cogeneration unit, the EPA failed to reasonably extrapolate the results at Petra Nova to a system using integrated steam and power. Considering these factors, the experience at Petra Nova does not support 90 percent capture as adequately demonstrated.

Comments: Some commenters cited additional examples of CO₂ capture on coal-fired steam generating units in China. Commenters cited the 150,000 metric tons of CO₂ per year Jinjie demonstration project. Commenters also cited the 500,000 metric tons of CO₂ per year Taizhou CCS project, which began operation in June 2023 and captures less than 12.5 percent of the 1,000 MW EGU's total CO₂ emissions. Commenters also referenced the 1.5 million metric tons of CO₂ per year Longdong CCS project at the coal-fired Zhengning Power Plant. Captured CO₂ will be stored in geologic storage and used for EOR. The 270 MWe project has a design capture efficiency of 95 percent from a portion of the flue gas from a 1,000 MW coal-fired EGU.¹⁷⁰

EPA Response: The Jinjie demonstration project began operation in June 2021 and processes less than five percent of the flue gas from one of the units at the coal-fired power plant.¹⁷¹ By January 2025, the Taizhou CCS project had captured just 300,000 metric tons of CO₂, far below its design basis. While a report states that this project achieves a capture rate of 90.86 percent, detailed data (e.g., operating-availability, amount of flue gas processed) is limited.¹⁷² According to a press release, the Longdon CCS project completed a 72-hour test on September 25, 2025, but the press release did not contain detailed performance information.¹⁷³ Beyond that press release, no reports on the project are

available. Because of the limited data available, the EPA has concluded that these projects do not support 90 percent capture as adequately demonstrated.

iii. Variations in Performance of CO₂ Capture

The determinations in the 2024 CPS assumed that the CO₂ capture system is available every hour the EGU is operational and performs at its design capture efficiency (or better) during each of those hours. The EPA finds that the Agency did not adequately account for variations in performance of CO₂ capture that would result in a lower capture efficiency. This further supports the conclusion that 90 percent CO₂ capture is not adequately demonstrated for existing coal-fired steam generating units.

In the 2024 CPS, the EPA did not account for periodic decreases in the performance of the CO₂ capture system due to solvent degradation and fouling of components between maintenance cycles. Boundary Dam Unit 3 experienced challenges with respect to solvent foaming, biological fouling, scaling, and fouling from fly-ash.^{174, 175} While units could take actions to address those issues, performance and capture efficiency would necessarily decrease in between treatments or maintenance (e.g., fouling would steadily accumulate after cleaning). On average, the capture efficiency would therefore be less than optimal. SaskPower indicated that even after applying such fixes, Boundary Dam Unit 3 achieved, at best, a total capture efficiency of 83 percent when the capture system was operating.¹⁷⁶

Furthermore, the EPA did not adequately account for periods of startup on the operation of the capture system.¹⁷⁷ After absorption, thermal energy (heat) in the form of steam is required to release the CO₂ from the CO₂-rich solvent and electricity is required to power the compressor to compress the CO₂ for transport via pipeline. However, prior to substantial production of steam and electricity,

major components of the capture process may be offline. Even assuming the capture system could consistently capture 90 percent CO₂ when operating, any CO₂ emitted prior to operation of the capture equipment would necessarily result in an average capture efficiency of less than 90 percent.

To consistently achieve 90 percent capture on average, the source would have to overperform during certain hours. The EPA cited results from Boundary Dam that suggested higher capture efficiencies were achieved at lower throughputs.¹⁷⁸ However, in its justification of the BSER, the EPA relied on an assumption that sources would operate at high capacity throughout the course of the year. If that were the case, the hypothetical higher capture efficiencies a system could potentially achieve at lower throughputs would not occur in practice. To otherwise achieve an annual average capture efficiency of 90 percent, higher instantaneous capture efficiencies likely would need to be achievable. In the 2024 CPS, the EPA cited vendor statements of pilot tests for different commercial amine solvents where operators observed higher capture efficiencies under specific conditions.¹⁷⁹ However, the experience at Boundary Dam shows that it would be reasonable to anticipate that the total capture efficiency a system achieves in practice would be less than design specifications.

iv. Planned Projects

In the 2024 CPS, the EPA also previously cited planned projects and front-end engineering and design (FEED) studies.^{180, 181} However, the planned projects are neither operational nor provide measured data. While the equipment for those planned projects may have been designed for 90 or even 95 percent CO₂ capture, simply designing a project for a certain percentage capture does not ensure that the project will achieve that percentage capture in practice. Boundary Dam Unit 3 did not achieve its design percentage capture, as detailed in section IV.A.1.a.i of this preamble. Therefore, because those hypothetical projects have not yet produced any data, they do not mitigate

¹⁷⁰ State of the Art: CCS Technologies 2025. Global CCS Institute (2025). Available at: <https://www.globalccsinstitute.com/wp-content/uploads/2025/08/State-of-the-Art-CCS-Technologies-2025-Global-CCS-Institute.pdf>. 27 percent of the flue gas is treated.

¹⁷¹ Bongers, N. China's impressive strides towards CCUS. Low Emission Technology Australia. (2025). Available at: <https://letaustalia.com.au/wp-content/uploads/Executive-Summary-Chinas-Impressive-Strides-Towards-Carbon-Capture-Utilisation-and-Storage-CCUS.pdf>.

¹⁷² Gong, H., et al. Taizhou 500kt per year post-combustion carbon capture demonstration project. *Clean Energy*, 9 (4). (2025). Available at: <https://doi.org/10.1093/ce/zkaf011>.

¹⁷³ China Launches World's Largest Coal-fired Carbon Capture Project (September 29, 2025). Available at: en.sasac.gov.cn/2025/09/29/c_19886.htm.

¹⁷⁴ Giannaris, S., et al. SaskPower's Boundary Dam Unit 3 Carbon Capture Facility—The Journey to Achieving Reliability. *Proceedings of the 15th International Conference on Greenhouse Gas Control Technologies*. (2021). Available at: <http://dx.doi.org/10.2139/ssrn.3820191>.

¹⁷⁵ Pradoo, P., et al. Improving the Operating Availability of the Boundary Dam Unit 3 Carbon Capture Facility. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <http://dx.doi.org/10.2139/ssrn.4286503>.

¹⁷⁶ U.S. EPA, "Meeting with SaskPower to Discuss CCS at Boundary Dam Unit 3" (January 18, 2024). Document ID No. EPA-HQ-OAR-2023-0072-8906.

¹⁷⁷ 89 FR 39798, 39854, 39929 (May 9, 2024).

¹⁷⁸ Jacobs, B., et al. Reducing the CO₂ Emission Intensity of Boundary Dam Unit 3 Through Optimization of Operating Parameters of the Power Plant and Carbon Capture Facilities. *Proceedings of the 16th International Conference on Greenhouse Gas Control Technologies*. (2022). Available at: <https://dx.doi.org/10.2139/ssrn.4286430>.

¹⁷⁹ 89 FR 39798, 39852 (May 9, 2024).

¹⁸⁰ 89 FR 39798, 39851 (May 9, 2024).

¹⁸¹ See Chapter 4.4 and Table 13 of *Greenhouse Gas Mitigation Measures for Steam Generating Units*. Document ID No. EPA-HQ-OAR-2023-0072-9095.

the potential underperformance of CO₂ capture, and, therefore, are not sufficient to show that 90 percent CO₂ capture is adequately demonstrated.¹⁸² Moreover, none of the projects (for post-combustion CO₂ capture from fossil fuel-fired EGUs) with feasibility or FEED studies previously cited by the EPA have moved forward to construction.

There are no post-combustion CCS applications on fossil fuel-fired EGUs that have begun operation since the finalization of the 2024 CPS that are sufficient to support 90 percent capture as adequately demonstrated. Rather, some of the planned projects cited in the 2024 CPS either have been abandoned or have faced other challenges. Project Diamond Vault was a planned project to capture up to 95 percent of CO₂ emissions from the 600 MW Madison Unit 3 at Brame Energy Center in Lena, Louisiana.¹⁸³ The FEED study and current plans for carbon capture were abandoned in late 2024.¹⁸⁴ Project Tundra is a carbon capture project in North Dakota at the Milton R. Young Station lignite coal-fired power plant that planned for the capture plant to treat the flue gas from the 455 MW Unit 2 and some additional flue gas from the 250 MW Unit 1 (an equivalent capacity of 530 MW in total).¹⁸⁵ TC Energy, a primary sponsor of Project Tundra, has since withdrawn from the project, although the project may continue to move forward depending on various factors.¹⁸⁶ The timeframes for several other CCS projects on coal-fired EGUs are unclear.¹⁸⁷

¹⁸² This includes projects for CCS on coal-fired steam generating units in West Virginia and Alaska that were recently selected for funding by DOE. See Project Selections for Broad Agency Announcement DE-FOA-0003605, Restoring Reliability: Coal Recommissioning and Modernization (Topic 1). Available at: <https://www.energy.gov/hgeo/project-selections-broad-agency-announcement-de-foa-0003605-restoring-reliability-coal-0>.

¹⁸³ Project Diamond Vault Overview. Document ID No. EPA-HQ-OAR-2025-0124-0027.

¹⁸⁴ Cleco Corporate Holdings, LLC SEC Form 10Q, at 51 (August 18, 2024). Available at: <https://www.sec.gov/Archives/edgar/data/18672/000108981924000026/cnl-20240630.htm>.

¹⁸⁵ “An Overview of Minnesota’s Carbon Capture Initiative—Project Tundra,” 2023 LEC Annual Meeting (October 5, 2023).

¹⁸⁶ Power Engineering. Key partner withdraws from large-scale CO₂ capture project. Available at: <https://www.power-eng.com/environmental-emissions/carbon-capture-storage/key-partner-withdraws-from-large-scale-co2-capture-project/>.

¹⁸⁷ D. Gearino, *A Carbon Capture Project Faces a New Delay in a Year of Slow Progress for Coal Power Plants Looking for Retrofits*, Inside Climate News (December 10, 2024). Available at: <https://insideclimatenews.org/news/10122024/north-dakota-coal-plant-carbon-capture-project-faces-new-delay/>.

b. Cost

The EPA has re-evaluated the costs and associated assumptions of 90 percent CCS on existing long-term coal-fired steam generating units and is finalizing the determination that the costs are not reasonable based on the rationale detailed in this section of the preamble.

i. Capacity Factor, Effective Capture Efficiency, and Other Assumptions

In the 2024 CPS, costs for CCS on existing coal-fired steam generating units were determined assuming a best-case scenario. Specifically, the cost assessment assumed sources operated at high annual capacity factors (80 percent) and that the CO₂ capture equipment was available and performing optimally every hour the EGU was operating. However, in 2023, coal-fired EGUs had an average capacity factor of 42 percent.¹⁸⁸ Lower capacity factors typically result in less revenue from electricity generation. Moreover, as detailed in the preceding section of this preamble, even with a design capture efficiency of 90 percent, the actual total capture efficiency over the course of the year is lower, and under some circumstances significantly lower. Consequently, less CO₂ captured (due to lower actual capture efficiency, lower EGU capacity factor, or both) results in higher costs due to reduced revenue from the IRC section 45Q tax credit.¹⁸⁹

Furthermore, rather than directly considering the costs for any operation after the expiration of availability of the IRC section 45Q tax credit for existing coal-fired steam generating units in the 2024 CPS, the EPA committed to review the requirements of the emission guidelines pertaining to existing coal-fired steam generating units by January 1, 2041, and posited that other mechanisms for potential valuation of EGUs operating with 90 percent CCS could arise in the future.¹⁹⁰ However, those assumptions are no longer reasonable because the EPA believes that coal-fired steam generating units are now more likely to operate longer than they will be able to claim the tax credit. As noted in the June 2025 NPRM, the EPA believes that coal-fired steam generating unit capacity and generation will continue to comprise a substantial portion of the nation’s electricity

supply.¹⁹¹ A number of coal-fired steam generating units are delaying or canceling their scheduled retirements in light of increasing electricity demand, among other factors.¹⁹² The EPA’s projections further show a substantial capacity of coal-fired steam generating units operating in the long term.¹⁹³ Based on a lower capacity factor and operation beyond 12 years, the EPA proposed that, even if the IRC section 45Q tax credit is accounted for as a reduction, the costs are unreasonable and solicited comment on the assumptions in evaluation of the reasonableness of the cost of the BSER.

Comments: Some commenters agreed with the EPA’s capacity factor assumptions in the June 2025 NPRM for evaluating the cost of CCS as BSER. Other commenters stated that the 80 percent capacity factor assumed for cost calculations in the 2024 CPS was reasonable and argued that the availability of the IRC section 45Q tax credit would incentivize higher capacity factors. Commenters also argued that the EPA’s June 2025 NPRM was internally inconsistent, noting that elsewhere the June 2025 NPRM stated that “coal-fired steam generating unit capacity and generation will continue to comprise a substantial portion of the nation’s electricity supply.”¹⁹⁴ Some commenters disagreed with the EPA’s analysis based on a capture system underperforming (*i.e.*, designed for 90 percent capture, but achieving 75 percent total capture efficiency in practice). Commenters argued that the 75 percent total capture efficiency was unjustified.

EPA Response: As detailed in section IV.A.1.a of this preamble, it is reasonable to anticipate that a capture system designed to achieve a given capture efficiency would underperform. While CCS may achieve emission reductions, evidence shows the CO₂ capture system underperforms. The capture system at Boundary Dam Unit 3 was designed to achieve 90 percent capture but achieved, at best, 63 percent total capture efficiency on an annual basis between 2015 and 2022. Under a set of assumptions that reflect the underperformance of CCS, lower capacity factors, and the limited

¹⁹¹ See 90 FR 25752, 25772, 25774 (June 17, 2025).

¹⁹² D. Proctor, *U.S. Coal Plants Get Reprieve as Market and Policies Change*, Power (February 6, 2025). Available at: <https://www.powermag.com/u-s-coal-plants-get-reprieve-as-market-and-policies-change/>.

¹⁹³ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

¹⁹⁴ 90 FR 25774 (June 17, 2025).

¹⁸⁸ U.S. Energy Information Administration. Electric Power Annual. Available at: <https://www.eia.gov/electricity/annual/>.

¹⁸⁹ These tax credits are currently available for a twelve-year period for facilities that commence construction before January 1, 2033, and can be used to offset tax liability. 26 U.S.C. 45Q (2025).

¹⁹⁰ 89 FR 39798, 39902 (May 9, 2024).

availability of the IRC section 45Q tax credit,¹⁹⁵ the costs are substantially higher (\$62/MWh, \$124/ton of CO₂ reduced) than those determined in the 2024 CPS and more than three times higher on a \$/MWh basis than the costs the EPA has previously determined to be reasonable (\$18.50/MWh).¹⁹⁶ Even assuming a higher capacity factor that reflects the average capacity factor of coal-fired steam generating units of approximately 70 percent in the updated baseline projection,¹⁹⁷ costs remain high (\$50/ton, \$25/MWh).¹⁹⁸ Such high costs, particularly on a \$/MWh basis, are not reasonable, even considering the potential CO₂ emission reductions, and do not support 90 percent CCS as BSER.

ii. The IRC Section 45Q Tax Credit

The costs for 90 percent CCS are even higher if the IRC section 45Q tax credit is not accounted for as a reduction (\$77/MWh and \$155/ton).¹⁹⁹ In the 2024 CPS, the costs of 90 percent CCS for existing coal-fired steam generating units accounted for the IRC 45Q tax credit by reducing the direct costs to the source for every ton of CO₂ reduced.

¹⁹⁵ These costs include the costs of capital equipment, etc., consistent with 90 percent design capture rate, 63 percent actual capture rate, a fixed 40 percent capacity factor, and 15-year booklife (12 years of 45Q availability, three years without). Costs are expressed in 2019\$. See memorandum entitled *Updated Evaluation of Best System of Emission Reduction Costs of Carbon Capture and Sequestration/Storage at Existing Coal-Fired Electric Generating Units* in the docket for this rulemaking.

¹⁹⁶ Costs are expressed in 2019\$. In a variety of rulemakings, the EPA has required coal-fired EGUs to install and operate flue gas desulfurization (FGD, or wet scrubbers) to reduce their SO₂ emissions. The annualized cost of installing these controls on a representative 700 to 300 MW coal-fired steam generating unit are \$14.80 to \$18.50/MWh. Hence control costs that are generally consistent with these values should be considered reasonable. See 89 FR 39798, 39882 (May 9, 2024).

¹⁹⁷ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

¹⁹⁸ These costs include the costs of capital equipment, etc., consistent with 90 percent design capture rate, 63 percent actual capture rate, a fixed 70 percent capacity factor, and 15-year booklife (12 years of 45Q availability, three years without). Costs are expressed in 2019\$. See memorandum entitled *Updated Evaluation of Best System of Emission Reduction Costs of Carbon Capture and Sequestration/Storage at Existing Coal-Fired Electric Generating Units* in the docket for this rulemaking.

¹⁹⁹ These costs include the costs of capital equipment, etc., consistent with 90 percent design capture rate, 63 percent actual capture rate, a fixed 70 percent capacity factor, and 15-year booklife (no reduction in cost from 45Q). Costs are expressed in 2019\$. See memorandum entitled *Updated Evaluation of Best System of Emission Reduction Costs of Carbon Capture and Sequestration/Storage at Existing Coal-Fired Electric Generating Units* in the docket for this rulemaking.

The 2024 CPS assessed costs over a period consistent with the 12-year availability of the IRC section 45Q tax credit. The 2024 CPS justified that position on grounds that CAA section 111(a)(1) requires the EPA, in determining the BSER, to account for “the cost of achieving such [emissions] reduction,” and asserted that this provision refers to the cost to the source rather than the societal cost. The Inflation Reduction Act (IRA) extended and expanded the IRC section 45Q tax credit and included CAA section 135(a)(6), requiring the EPA to promulgate regulations under the CAA’s authorities to ensure reductions in GHG emissions. In the 2024 CPS, the EPA further stated that the IRA included legislative history stating that Congress intended to authorize the Agency to promulgate regulations under CAA section 111 to reduce GHGs from fossil fuel-fired power plants, including regulations based on CCS that assumed lower cost due to the 45Q tax credit.²⁰⁰ In its proposed repeal of the 2024 CPS, the EPA reevaluated this position and proposed that reducing control costs by the amount of the tax credit is an incorrect accounting for the costs of control, and solicited comment on this position.²⁰¹

(A) Comments and Responses

Comments: Some commenters opposed the June 2025 NPRM and stated that the EPA must account for the IRC section 45Q tax credit as a reduction when evaluating the costs of 90 percent CCS. Commenters argued that the EPA has long understood the “cost” in CAA section 111(a)(1) to refer to whether the cost to the regulated source would be too great to implement the technology.²⁰² Some commenters argued that counting the IRC section 45Q tax credit as a reduction in costs in the evaluation of reasonableness of the costs is the best reading of CAA section 111(a)(1), which directs EPA to “tak[e] into account the cost of achieving such reduction,” when determining the BSER, not costs generally. Commenters stated the phrase “such reduction” refers to the emission reduction “achieve[ed] through the application of the best system of emission reduction.” Because sources are the entities that apply the best system, the phrase “cost of achieving such reduction” is best read as focusing on costs borne by those sources, rather than broader economic

impacts. Commenters argued the EPA has followed this approach since the beginning of the regulatory program.²⁰³

Other commenters agreed with the June 2025 NPRM and stated that the EPA should not consider the IRC section 45Q tax credit as a reduction when evaluating the cost of CCS as a potential BSER. One commenter stated that the statute requires consideration of total costs and cited the Supreme Court’s decision in *Michigan*.²⁰⁴ Commenters claimed that the decision held that the EPA must consider all costs, including system and indirect costs, when evaluating the reasonableness of a standard. Some commenters argued that tax credits do not reduce the cost of 90 percent CCS but simply shift those costs to taxpayers. A few commenters further stated that CAA section 111(a)(1) includes consideration of societal costs beyond those to a source’s owner or operator. One commenter argued that the inclusion of “cost” in the parenthetical of CAA section 111(a)(1), along with other factors that account for societal disbenefits, suggests that the best reading of CAA section 111(a)(1) is that the EPA should not focus solely on the cost to the source when evaluating the BSER and, therefore, should not account for the IRC section 45Q tax credit as reducing costs.

EPA Response: The EPA agrees with the commenters who stated that the 2024 CPS erred in excluding the value of the IRC section 45Q tax credit from the cost of CCS by counting the tax credit as a reduction in the cost of CCS. CAA section 111(a)(1) provides that the EPA must determine “the best system of emission reduction . . . (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements).” This provision does not, by its terms, limit the costs to those incurred directly by the source. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the best interpretation of this provision is that the costs include the full costs of the controls (*i.e.*, without reduction by the amount of the IRC section 45Q tax credit). Under the justification in the 2024 CPS for considering the IRC section 45Q tax credit, if a cost was passed on to the public through a large tax credit or other similar subsidy, and

²⁰³ Commenters cited *Portland Cement Ass’n*, 486 F.2d at 388, observing that the ruling explained that the “cost” analysis is focused on equipment and operating costs and rejected an argument that a broader cost-benefit analysis evaluating impacts was required because that would “conflict with the specific time constraints imposed on the administrator.”

²⁰⁴ Commenters cited 576 U.S. at 752–53.

²⁰⁰ 89 FR 39798, 39881 (May 9, 2024).

²⁰¹ 90 FR 25752, 25772 (June 17, 2025).

²⁰² Commenters cited *Portland Cement Ass’n*, 513 F.2d at 508 (“The industry has not shown inability to adjust itself in a healthy economic fashion to . . . the standards prescribed.”).

that transfer was counted as a reduction, then much more expensive controls would be considered reasonable as long as the cost of those controls were passed on to the public. As commenters noted, the tax credit does not eliminate costs, it simply transfers costs to the U.S. taxpayer. Thus, the costs paid by the U.S. taxpayer, in the form of the reduction in tax receipts due to the IRC section 45Q tax credit, are part of “the cost of achieving [the emission] reduction,” under CAA section 111(a)(1). As commenters also noted, this interpretation treats “costs” as consistent with the other factors that CAA section 111(a)(1) directs the EPA to consider because those other factors are not limited to the source. Specifically, CAA section 111(a)(1) directs the EPA to consider “nonair quality health and environmental impact[s]” that affect the public and “energy requirements,” which include effects on the broader energy system.

Comments: Commenters argued that counting the IRC section 45Q tax credit as a reduction in costs is consistent with Congressional intent. Commenters stated that Congress enacted the IRC section 45Q tax credit specifically to encourage CCS deployment because Congress had determined such deployment as sufficiently valuable to justify the cost, and that Congress amended the CAA in the IRA and directed the EPA to regulate with the expanded tax incentives of the IRA in mind.²⁰⁵ Commenters stated that if Congress wants to keep a federal funding program from affecting a BSER determination under CAA section 111, Congress would include legislative text stating so, as Congress similarly did for the funding provided as part of the Energy Policy Act of 2005 (EPA05). Commenters note that no similar provision exists for the IRC section 45Q tax credit. Some commenters took issue with the June 2025 NPRM’s observation that there was pending legislation that would have ended the tax credit. Commenters observed that, rather than eliminate the tax credit, Congress in the OBBBA expanded the tax credit by increasing the value for CO₂ used for EOR and implementing a more favorable inflation adjustment.

EPA Response: CAA section 135(a)(6), as adopted by the IRA, provides \$18 million to the EPA “to ensure that reductions in [GHG] emissions are achieved through the use of the existing authorities of [the CAA], incorporating [an] assessment” that the EPA is

required to conduct of reductions in GHG emissions from changes in domestic electricity generation and use through fiscal year 2031.²⁰⁶ However, this provision does not mention CAA section 111 and thus by its terms is not specific enough to indicate Congressional intent to authorize the EPA to promulgate CAA section 111 regulations based on CCS as the BSER and, in doing so, to account for the cost of CCS after reductions by the IRC section 45Q tax credit.

The EPA further disagrees with commenters’ objection that if Congress had intended for the Agency not to consider the reduction in control costs due to the IRC section 45Q tax credit, Congress would have explicitly said so. Commenters note that in the EPA05, Congress included provisions explicitly precluding the EPA from considering projects that included emissions controls that had been funded through EPA05 in determining whether those controls are adequately demonstrated under CAA section 111. Absent such provisions, CAA section 111 would have allowed the EPA to consider those projects. As noted in this section of the preamble, the best interpretation of CAA section 111 is that the EPA must consider the costs of the control device, whether the costs are incurred by the facility or the taxpayer through the IRC section 45Q tax credit, and that if Congress had intended that the EPA not to do so, Congress would have included a specific provision to that effect.

Comments: Some commenters stated that in *Michigan v. EPA*, the U.S. Supreme Court reiterated that in promulgating rulemakings, Federal agencies “are required to engage in ‘reasoned decisionmaking,’ ”²⁰⁷ and that “ordinarily requires paying attention to the advantages and the disadvantages of agency decisions.”²⁰⁸ Commenters stated that the failure of the EPA to consider the burden on the average U.S. taxpayer of the IRC section 45Q tax credit constituted a failure of reasoned decisionmaking.

EPA Response: The EPA agrees with the commenters, and that considering the burden on U.S. taxpayers tilts this action against adopting CCS as the BSER. The EPA is finalizing that the IRC section 45Q tax credit should not be accounted for as a reduction in costs to the source when evaluating the reasonableness of the costs of the BSER. Without taking into account the IRC section 45Q tax credit as a reduction,

the costs of 90 percent CCS as BSER (\$77/MWh and \$155/ton) are unreasonable for long-term coal-fired steam generating units.²⁰⁹

c. Infrastructure

The large, widespread, and third-party infrastructure needed to support CCS is unique as compared to other BSER control technologies the EPA has historically analyzed and adopted under CAA section 111. In the 2024 CPS, the EPA determined that the capture, pipeline, and sequestration infrastructure necessary for the affected sources to meet the standards could be deployed by the compliance date of January 1, 2032. However, that position relied on incorrect assumptions in an unrealistic, best-case scenario that experience has already shown to be inaccurate. Therefore, the EPA proposed that the degree of emission limitation is not achievable because it is unlikely that the necessary infrastructure can be deployed by that compliance date.

In general, the capture, pipeline, and sequestration infrastructure necessary for 90 percent CCS for the fleet of existing coal-fired steam generating units does not currently exist. The necessary infrastructure would need to be broadly deployed, and there are challenges that exist for sources (e.g., pipeline permitting and right-of-way) that may not be able to be resolved. It is highly unlikely, if not impossible, that the infrastructure necessary for CCS can be deployed by the January 1, 2032, compliance date, and the EPA is therefore finalizing that the degree of emission limitation in the 2024 CPS for long-term coal-fired steam generating units is not achievable.

With respect to the timeline for implementing infrastructure that does not currently exist, the EPA is revising both the weight the Agency should place on such future projections and its future projections with respect to 90 percent CCS. In the 2024 CPS, the Agency took the general position that an adequately demonstrated control technology could be selected as the BSER, and therefore the basis for a standard, so long as implementation at the scale required for compliance to be feasible could be projected to a date certain. However, upon further consideration and in light of public

²⁰⁹ These costs include the costs of capital equipment, etc., consistent with 90 percent design capture rate, 63 percent actual capture rate, a fixed 70 percent capacity factor, and 15-year booklife (no reduction in cost from 45Q). Costs are expressed in 2019\$. See memorandum entitled *Updated Evaluation of Best System of Emission Reduction Costs of Carbon Capture and Sequestration/Storage at Existing Coal-Fired Electric Generating Units* in the docket for this rulemaking.

²⁰⁶ 42 U.S.C. 7435(a)(6).

²⁰⁵ Commenters cited the Inflation Reduction Act, Public Law 117–169, section 13104, 136 Stat. 1818, 1924–29 (2022).

²⁰⁷ 576 U.S. at 750 (citing *Allentown Mack Sales & Service, Inc. v. NLRB*, 522 U.S. 359, 374 (1998)).

²⁰⁸ *Id.* at 753 (emphasis omitted).

comments, the EPA is now clarifying that the uncertainty associated with such projections is a reason to disfavor the selection of such BSERs. The eight-year review cycle laid out in CAA section 111(b)(1)(B) is a signal that Congress thought the BSER generally should be capable of being implemented within eight years such that the EPA's review can meaningfully assess the success of the prior rule.^{210 211} In the 2024 CPS, the EPA estimated that it would take approximately seven years to implement 90 percent CCS for existing coal-fired units. The 2024 CPS also provided an exemption under which sources were not subject to the rule if they closed by the date that compliance with the standard based on 90 percent CCS would have commenced (January 1, 2032). However, as explained in section IV.A.1.c of this preamble, the EPA is now determining that the January 1, 2032 compliance date for 90 percent CCS for existing coal-fired steam generating units was overly optimistic. That is, implementing 90 percent CCS would take longer than the seven years provided in the 2024 CPS, bringing it close to CAA section 111(b)(1)(B)'s eight-year benchmark, if not exceeding it.

With respect to the infrastructure itself, the EPA has, upon further review, determined that the novelty of a BSER predicated on widespread infrastructure operated by third parties warns strongly against its selection. Much of the necessary CCS infrastructure requires the involvement, both for initial development and ongoing performance, of external third parties over whom the owners and operators of regulated facilities have limited control. Each of the three components of CCS—capture, transport, and storage—entail distinct infrastructure projects completed and operated in most instances by different sets of third parties, and all three components would need to be timely completed by those different sets of

third parties without delay for owners and operators to be able to implement the CCS requirements by the January 1, 2032, compliance date. Construction of a CO₂ capture facility requires years of engineering analysis by third-party experts before ground can be broken and installation of the necessary equipment can commence.²¹² Development of a capture facility also includes entering into necessary agreements and procuring permits through processes that may be governed by multiple jurisdictions, including but not limited to federal and state permitting authorities. And construction itself takes two or more years and involves many different activities that require a range of expert third parties.²¹³ In addition to the CO₂ capture facility, CCS also requires implementation of CO₂ pipeline infrastructure and CO₂ injection and storage infrastructure which involves reliance on engineers, geologists, construction firms, and permitting authorities, at least some of whom are likely separate from those involved in design and construction of the capture facility, as well as being outside of the electricity generation sector.

A BSER based on 90 percent CCS thus requires involvement, at multiple steps, of a complex web of experts and practitioners across a wide range of disciplines, many of whom may not be part of the regulated source category, or even the broader industry of which it is part, *i.e.*, the electric power industry. The implication is that these third parties are not subject to the same regulatory impetus as the owner or operator of a coal-fired steam generating unit that would be subject to requirements under the 2024 CPS. The scale of the ancillary infrastructure required to support implementation of 90 percent CCS and the multitude of parties outside of an owner or operator's control at multiple steps of the process that are necessary to successfully design, permit, construct, test, and operate a CCS system makes it unreasonable to base federally enforceable requirements on the presumption of a best-case scenario for implementation when tardy- or non-performance by a single party has the potential to cause or exacerbate delays that ripple through the deployment of the CCS system.

The tenuousness of timely compliance given the scope of the requisite infrastructure for 90 percent

CCS, coupled with the novelty of CCS and the need for a large number of third parties, is especially apparent when it is contrasted with air pollution control technologies that have been in widespread use in the power sector for decades, such as scrubbers for SO₂ emissions and selective catalytic reduction (SCR) for NO_x emissions.²¹⁴ Those latter control technologies do not rely on extensive pipeline and sequestration infrastructure. In contrast, the infrastructure to implement CO₂ capture in the power sector at a large scale is extensive, relatively new,²¹⁵ and involves a large collection of parties and activities necessary for design, permitting, construction, and implementation. All this compounds the likelihood of delays in implementation as parties work through necessary learning processes, which further supports the unreasonableness of the 2024 CPS's aggressive compliance timeframe. To be sure, CCS has been employed in some industries for certain limited purposes. However, in those instances, CCS has not been required by federal regulation under enforceable timelines or at a similar nationwide scale, meaning that any non-performance by third parties has not resulted in noncompliance with federally enforceable obligations.

In reaching these conclusions, the EPA notes that CAA section 111 anticipates analyses and regulatory requirements that turn on actions by the regulated source. Pursuant to CAA section 111(a)(1), the Agency must promulgate standards that “reflec[t] the degree of emission limitation achievable through the *application* of the [BSER],” and the resulting emission standards apply, in turn, to the regulated source. Consistent with the EPA's historical understanding, this language is most naturally read as tying the BSER to results that are achievable through the source's application of the selected

²¹⁰ CAA section 111(b)(1)(B) provides that the Administrator shall review and, if appropriate, revise NSPS at least every eight years. However, the Administrator need not review any such standard if the Administrator determines that “such review is not appropriate in light of readily available information on the efficacy of such standard.” 42 U.S.C. 7411(b)(1)(B). The EPA believes that the eight-year review cycle is relevant to existing sources regulated under CAA section 111(d) because it speaks to the appropriateness of a system of emission reduction as the BSER, and the BSER considerations under CAA section 111(a)(1) apply to both new and existing sources.

²¹¹ In the event a system of emission reduction would take longer than eight years to implement, the EPA should take a hard look at whether it in fact qualifies as the BSER under CAA section 111(a)(1). The result of this inquiry may depend on whether other, less time-intensive options are available.

²¹² Sargent & Lundy, *CO₂ Capture Project Schedule and Operations*, Document ID No. EPA-HQ-OAR-2023-0072-9095, at 2–3 (April 2024).

²¹³ *Id.* at 3–4.

²¹⁴ See, e.g., 44 FR 33580, 33580 (June 11, 1979) (promulgating standards of performance for SO₂ emitted from new, modified, and reconstructed fossil fuel-fired steam generating EGUs under CAA section 111(b) based on use of scrubbers); 63 FR 49442, 49445 (Sept. 16, 1998) (promulgating standards of performance for NO_x emitted from new fossil fuel-fired steam generating units under CAA section 111(b) based on use of SCR).

²¹⁵ While CCS has a longer history of implementation in other industries, such as ethanol production, it has not been broadly deployed in the power sector at the capture rates contemplated in the 2024 CPS. Similarly, while the 2015 NSPS for new coal-fired power plants established a standard of performance based on partial-CCS, 80 FR 64510, 64545 (Oct. 23, 2015), no new coal-fired power plants have been constructed that would be subject to this standard. Therefore, the power sector's experience with CCS has been relatively limited compared to other, similarly complex pollution controls.

control technology. While sources commonly rely on third parties in the normal operation of their business, the extensive infrastructure requirements for CCS, coupled with the novelty of the control technology and the high level of dependence on third parties, undermines the ability of sources to achieve the CCS-based emission standards. If any third party provider responsible for any of the many links in the CCS infrastructure chain fails to develop the necessary infrastructure in a particular area, is delayed in such development for any reason, or ceases operation for any reason, the source would no longer be able to comply. These circumstances are different in kind from other BSERs that entail substantially less novel infrastructure.

The EPA is thus finding that the 2024 CPS erred by not considering the extent of the ancillary infrastructure and reliance on third parties needed for 90 percent CCS to be deployable at scale. This lapse is especially salient given the novelty of CCS at this scale and applied to this particular sector. These considerations provide further support for the conclusion that the January 1, 2032, compliance date and the degree of emission limitation are unachievable.

Comments: Some commenters stated that 90 percent CCS is achievable because the necessary infrastructure can be deployed by the compliance deadline. Commenters reiterated the arguments the EPA previously made in the 2024 CPS, including asserting that the timeline for deployment of capture based on the Sargent and Lundy report was achievable.²¹⁶ Commenters also stated that sequestration potential is broadly available, and that the 2024 CPS was premised on smaller, often intrastate CO₂ pipelines from the source to those storage sites. Commenters also stated that the EPA has made significant progress toward granting additional States primacy over Class VI injection wells for geologic storage of CO₂.^{217 218}

²¹⁶ Sargent & Lundy, *CO₂ Capture Project Schedule and Operations*, Document ID No. EPA–HQ–OAR–2023–0072–9095, at A–1 (April 2024).

²¹⁷ Class VI wells are used to inject CO₂ into deep rock formations and are regulated by the EPA under the Underground Injection Control (UIC) Program as authorized by the Safe Drinking Water Act. Available at: <https://www.epa.gov/uic/class-vi-wells-used-geologic-sequestration-carbon-dioxide#authorities>.

²¹⁸ Injection wells are overseen by either a state or tribal agency or one of EPA's regional offices. States and tribes may apply for primary enforcement responsibility to implement the UIC program. Primary enforcement responsibility, often called primacy, refers to State, territory, or Tribal responsibilities associated with implementing EPA approved UIC programs. A State, territory, or Tribe with UIC primacy, or primary enforcement responsibility, oversees the UIC program in that

Other commenters stated that 90 percent CCS is not achievable because the necessary infrastructure cannot be deployed fast enough to meet the compliance deadline. Commenters argued that the timeline for deployment of the capture equipment would take longer than detailed in 2024 CPS. Commenters asserted that FEED studies can require more than 12 months, and DOE FEED studies can require even longer due to additional reporting requirements. Commenters stated that deployment of a capture facility could take up to eight to 10 years. Some commenters noted that permitting for CO₂ pipelines varies by State, and that some States have restrictive policies for CO₂ pipelines. Some commenters stated that the Pipeline Hazardous Materials Safety Administration is still working on updated regulations for CO₂ pipeline safety.

EPA Response: In general, the capture, pipeline, and sequestration infrastructure necessary for 90 percent CCS for the fleet of existing coal-fired steam generating units does not currently exist.

The equipment for the capture of CO₂ takes time to design, permit, and install. In the 2024 CPS, the EPA assumed an aggressive, unrealistic timeline for deployment of capture equipment. The EPA's timeline for installation of capture equipment included a 12-month FEED study in place of an 18-month FEED study, based off the more aggressive project schedule in a report developed by Sargent and Lundy.²¹⁹ The EPA further abbreviated that schedule by two months based on its own assumptions by shortening the duration for commercial arrangements from nine months to seven months, assuming sources immediately begin sitework once permitting is complete, and accounting for 13 months (rather than 14) for startup and testing.²²⁰ However, those assumptions ignore any potential delays and do not reflect what is actually achievable.²²¹ The necessary infrastructure would need to be broadly deployed, and there are significant challenges that could exist for sources that would need to be resolved.

Regarding transport of CO₂, there is no existing network of CO₂ pipelines

State, territory, or Tribe. Available at: <https://www.epa.gov/uic/class-vi-wells-used-geologic-sequestration-carbon-dioxide>.

²¹⁹ Sargent & Lundy, *CO₂ Capture Project Schedule and Operations*, Document ID No. EPA–HQ–OAR–2023–0072–9095, Attachment 17 (April 2024).

²²⁰ 89 FR 39798, 39875 (May 9, 2024).

²²¹ See *Nat'l Lime Ass'n v. EPA*, 627 F.2d 416, 432–33 (D.C. Cir. 1980) (EPA must explain how the standard is “achievable under the range of relevant conditions” which sources may experience).

with the capacity capable of meeting the demands in the 2024 CPS. There are approximately 5,000 miles of CO₂ pipelines operational in the U.S.^{222 223} However, they are largely not located near existing coal-fired sources and additional pipelines would take time to deploy. Planned CO₂ pipelines continue to face delays due to several factors, including state permitting and the challenges associated with eminent domain authority and negotiating rights-of-way. For example, after promulgation of the 2024 CPS, Summit Carbon Solutions paused their application for a pipeline in South Dakota after the State banned eminent domain for CO₂ pipelines.^{224 225} A similar law is progressing through the Iowa legislature.²²⁶

Furthermore, while the U.S. has broad availability of the geologic formations that are potentially suitable for CO₂ sequestration, existing storage infrastructure for sequestration of CO₂ is limited. Underground CO₂ storage is governed by the Underground Injection Control program as authorized by the Safe Drinking Water Act.²²⁷ Under that program, Class VI wells are used to inject CO₂ thousands of feet underground for geologic storage, and are permitted by the EPA. There are 18 Class VI wells that have been permitted by the EPA and there are six states that have primary enforcement authority (Arizona, Louisiana, North Dakota, Texas, West Virginia, and Wyoming).²²⁸

²²² Congressional Research Service, *Carbon Dioxide Pipelines: Safety Issues*, CRS Reports (June 3, 2022). Available at: <https://www.congress.gov/crs-product/IN11944>.

²²³ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Annual Report Mileage for Hazardous Liquid or Carbon Dioxide Systems* (May 1, 2026). Available at: <https://www.phmsa.dot.gov/data-and-statistics/pipeline/annual-report-mileage-hazardous-liquid-or-carbon-dioxide-systems>.

²²⁴ J. Chilson, *Summit pauses CO₂ pipeline application in South Dakota*, South Dakota Public Broadcasting (March 12, 2025). Available at: <https://www.sdpb.org/business-economics/2025-03-12/summit-pauses-co2-pipeline-application-in-south-dakota>.

²²⁵ An Act to prohibit the exercise of eminent domain for a pipeline that carries carbon oxide, South Dakota Legislature House Bill 1052, 100th Session, H.J. 475 (March 6, 2025). Available at: <https://sdlegislature.gov/Session/Bill/25581>.

²²⁶ C. Koons, *House votes to ban eminent domain for CO₂ pipelines*, Iowa Capital Dispatch (March 26, 2025). Available at: <https://iowacapitaldispatch.com/2025/03/26/house-votes-to-ban-eminent-domain-for-co2-pipelines/>.

²²⁷ EPA, *Class VI Wells used for Geologic Sequestration of Carbon Dioxide* (May 14, 2026). Available at: https://www.epa.gov/uic/class-vi-wells-used-geologic-sequestration-carbon-dioxide#ClassVI_PermittingProcess.

²²⁸ EPA, *Current Class VI Projects under Review at EPA*. Accessed June 2, 2026. Available at: <https://www.epa.gov/uic/current-class-vi-projects-under-review-epa>.

In the 2024 CPS, the EPA based assumptions on the availability of “potential” storage sites. Time is required to characterize those sites to ensure the geology in the project area can receive and contain the CO₂ within the zone where it will be injected. However, the nearest available “potential” site may, after further investigation, not ultimately be suitable, *e.g.*, if faults or fractures are detected during site characterization. More time would then be required to find and characterize a new storage site, if another suitable site is even available. The timeline in the 2024 CPS did not take into consideration the prospect of project developers having to pivot to a different storage site should the initial site prove unsuitable. Development of planned storage sites may also face delays due to permitting and other issues. These challenges to deployment of CCS provide further support to the conclusion that the January 1, 2032, compliance date and degree of emission limitation are unachievable.

Moreover, a greater number of sources would likely be subject to CCS-based requirements than previously anticipated. Those sources would be competing to build CCS infrastructure, exacerbating any potential schedule delays or supply constraints, further limiting the achievability of the EPA’s infrastructure timeline in the 2024 CPS. As the EPA noted in the June 2025 NPRM, the Agency believes that coal-fired steam generating unit capacity and generation will continue to comprise a substantial portion of the nation’s electricity supply due to increasing electricity demand.²²⁹ A number of coal-fired steam generating units are delaying or canceling their scheduled retirements in light of this increasing demand, the changes in tax incentives for various types of electricity-generating resources in the OBBBA, and Administration actions to support the continued operation of coal-fired capacity.^{230 231} Recent changes in the U.S. electricity market affect the amount of coal-fired steam generating units operating in the long-term, as described in section III.C of this preamble, including increased electricity demand from data centers and scaled back tax credits for renewable generation under

the OBBBA. The EPA now projects that more existing coal-fired EGUs will operate in the long term and more base load NGCCs will be built than previously anticipated.²³² Specifically, at the end of 2024 there were 174 GW of coal-fired EGUs active in the power sector nationwide.²³³ The baseline 2024 analysis for the 2024 CPS projected that, absent requirements, approximately 40 GW of coal capacity would still be active by 2040.²³⁴ Therefore, the 2024 CPS considered the viability and reasonableness of installing and operating CCS at 40 GW of coal capacity. However, the EPA now projects that, as a baseline, approximately 100 GW of coal capacity will be active in 2040.²³⁵ Similarly, under the analysis conducted for the 2024 CPS, the EPA projected approximately 26 GW of incremental NGCC capacity additions by 2035.²³⁶ Under the 2025 analysis, absent the requirements of 2024 CPS, the EPA projects approximately 155 GW of new NGCC builds by 2035. Based on the EPA’s updated analytics a much larger number of EGUs would be subject to CCS-based standards than previously estimated in the 2024 CPS. The large amount of CCS infrastructure necessary would likely exacerbate any potential schedule delays or supply chain constraints. Deploying the necessary infrastructure for the affected fleet by the January 1, 2032, compliance date is therefore further unlikely.

Considering these factors, it is unlikely the infrastructure necessary for CCS can be deployed by the January 1, 2032 compliance date, and the EPA is therefore finalizing that the degree of emission limitation in the 2024 CPS for long-term coal-fired steam generating units is not achievable.

d. Conclusion

Because the EPA is finalizing that 90 percent CCS is not adequately demonstrated as the BSER and that the cost of 90 percent CCS for long-term coal-fired steam generating units is not reasonable, the Agency is finalizing the

determination that 90 percent CCS is not the BSER for long-term coal-fired steam generating units. Furthermore, because it is extremely unlikely that the extensive infrastructure necessary for CCS can be deployed by the January 1, 2032 compliance date, the EPA is finalizing a determination that the degree of emission limitation in the 2024 CPS for long-term coal-fired steam generating units is not achievable. Additionally, the challenges posed by the scope of the infrastructure are heightened by the involvement of numerous parties external to the owners and operators of the regulated facility, which complicates deployment and exacerbates delays that thus provides further support for the conclusion that the January 1, 2032 compliance date and the degree of emission limitation are unachievable.

Moreover, the EPA is concluding that in light of current information concerning sources’ inability to comply with 90 percent CCS by 2032, retaining 90 percent CCS as the BSER for existing coal-fired steam generating units that did not commit to retire before January 1, 2039, coupled with an exemption from the rule for sources that agreed to retire before January 1, 2032, would be a form of generation shifting prohibited by *West Virginia* under the circumstances here.²³⁷ Specifically, because updated projections demonstrate that compliance with 90 percent CCS generally is not feasible by 2032, sources have only one remaining option: retirement by 2032. Failing to revise the standard under these circumstances would therefore amount to forced closures in anticipation of other forms of power generation by facilities not subject to the at-issue 2024 CPS requirements.

In the immediate aftermath of *West Virginia*, the EPA initially focused on the Supreme Court’s statement that generation shifting could sometimes be a consequence of regulatory requirements under CAA section 111.²³⁸ The Agency believed at the time that the lesson of *West Virginia* was that generation shifting was appropriate as a *result* of regulation, so long as the regulation did not explicitly *require* it.²³⁹ The EPA therefore selected 90 percent CCS and 40 percent natural gas co-firing, coupled with an exemption contingent on unit retirement by 2032,

²²⁹ See 90 FR 25752, 25772, 25774 (June 17, 2025).

²³⁰ D. Proctor, *U.S. Coal Plants Get Reprieve as Market and Policies Change*, Power (February 6, 2025). Available at: <https://www.powermag.com/u-s-coal-plants-get-reprieve-as-market-and-policies-change/>.

²³¹ See, *e.g.*, U.S. Department of Energy, 2026 DOE 202(c) Orders. Available at: <https://www.energy.gov/ceser/2026-doe-202c-orders>.

²³² See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

²³³ U.S. Energy Information Administration, EIA Power Monthly (December 2024). Available at: <https://www.eia.gov/electricity/monthly/archive/december2024.pdf>.

²³⁴ Document ID No. EPA-HQ-OAR-2023-0072-8913, Table 3-14.

²³⁵ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

²³⁶ Document ID No. EPA-HQ-OAR-2023-0072-8913, Table 3-14.

²³⁷ 597 U.S. at 735.

²³⁸ See *id.* at 731 n.4 (noting that “there is an obvious difference between (1) issuing a rule that may end up causing an incidental loss of coal’s market share, and (2) simply announcing what the market share of coal, natural gas, wind, and solar must be”).

²³⁹ See, *e.g.*, 91 FR 39798, 39899 (May 9, 2024).

based on the belief that unit closure was an appropriate consequence so long as facilities could also choose to comply with the standards.

However, as detailed in section IV of this preamble, the EPA is now determining that the predictions and analyses underlying 90 percent CCS were overly optimistic. The EPA now concludes that requiring sources either to close by 2032 or comply with 90 percent CCS requirements that have now been determined to be unreasonable and impracticable essentially presents a Hobson's choice. That is, because the EPA's predictions regarding 90 percent CCS have now been determined to be overly optimistic, retaining the 2024 CPS would effectively force generation shifting by leaving regulated sources with no alternative to closure by the compliance deadline in 2032.

Consequently, the EPA is finalizing repeal of the requirements in emission guidelines pertaining to long-term coal-fired steam generating units. As discussed in this section of the preamble, the EPA is addressing only CCS with 90 percent capture and implementation by January 1, 2032, because these were the requirements under the 2024 CPS. This action does not finalize any potential alternative BSERs or implementation timeframes such as CCS with lower rates of capture or a later compliance date. The EPA considered whether to analyze and promulgate potential alternatives and determined it is not necessary to do so under the circumstances presented here.

2. Natural Gas Co-Firing-Based Requirements for Existing Medium-Term Coal-Fired Steam Generating Units

In the 2024 CPS, the EPA determined the BSER for existing medium-term coal-fired steam generating units to be 40 percent natural gas co-firing. Natural gas co-firing can require installation of new gas burners and related boiler modifications. Natural gas co-firing also requires construction of natural gas pipeline infrastructure to supply the necessary amount of natural gas to the unit. The EPA argued in the 2024 CPS that natural gas co-firing qualifies as the BSER for medium-term coal-fired units because, among other things, it does not result in unreasonable adverse consequences related to energy requirements. In the 2024 CPS, the EPA further argued that the degree of emission limitation based on application of the 40 percent natural gas co-firing BSER to the affected sources was achievable by the January 1, 2030, compliance date, considering the time

necessary to deploy the necessary natural gas pipeline infrastructure.

The EPA reevaluated the record for and the Agency's determinations in the 2024 CPS and subsequently proposed that 40 percent natural gas co-firing is not the BSER for existing medium-term coal-fired steam generating units based on the potential for significant adverse consequences related to energy requirements. The EPA also proposed that 40 percent natural gas co-firing cannot qualify as the BSER because it constitutes impermissible generation shifting. Finally, the EPA further proposed to determine that the degree of emission limitation based on 40 percent natural gas co-firing is not achievable because it is unlikely that the pipeline infrastructure necessary can be deployed by the compliance date of January 1, 2030. Consequently, the EPA proposed to repeal the requirements for medium-term coal-fired steam generating units.

The EPA is finalizing the determination that 40 percent natural gas co-firing is not the BSER for medium-term coal-fired steam generating units and is repealing the requirements for those sources on that basis. In this section of the preamble, the EPA details the three bases for this determination. The first basis discussed here—that 40 percent natural gas co-firing represents impermissible generation shifting—is sufficient to preclude it from qualifying as the BSER. However, the EPA is also providing two additional bases that provide additional support for this conclusion.

a. 40 Percent Natural Gas Co-Firing is Generation Shifting

The EPA is finalizing its proposed interpretation that 40 percent co-firing with natural gas is not the BSER for existing medium-term coal-fired steam generating EGUs because it constitutes generation shifting and is therefore beyond the EPA's authority to require under CAA section 111. In *West Virginia*, the Supreme Court held that a “system of emission reduction” under that section cannot include a forced shift of nationwide electricity generation from one type of energy source to another.²⁴⁰ That is, the BSER cannot be based on generation shifting. In discussing whether the EPA could effect generation shifting through at-the-source measures by, e.g., “simply requiring coal plants to become natural gas plants,” the Court stated that “EPA has never ordered anything remotely like that, and we doubt it could.”²⁴¹

²⁴⁰ 594 U.S. at 734–35.

²⁴¹ *Id.* at 728 n.3.

In the 2024 CPS, the EPA considered whether co-firing natural gas in a coal-fired boiler would constitute generation shifting and concluded that it would not. There, the Agency argued that, in contrast to impermissible generation shifting, 40 percent natural gas co-firing constitutes at-the-source fuel switching, which is a “traditional pollution control measure” as recognized by the Supreme Court in *West Virginia*.²⁴² The EPA further explained in the 2024 CPS that the Agency interpreted the Court's statements in footnote 3 of that opinion as referring to a complete transformation of a coal-fired unit to a 100 percent natural gas-fired unit and contrasted such complete repowering with natural gas co-firing at 40 percent.²⁴³

The EPA has reexamined the question of whether 40 percent natural gas co-firing is impermissible generation shifting and has now determined that requiring a utility to use a completely different fuel type runs counter to the Supreme Court's decision in *West Virginia*. Critically, in that decision, the Court found that the EPA lacks authority to decide the appropriate share of different types of electricity generation on a nationwide basis.²⁴⁴ Requiring a significant portion of the coal-fired fleet to become a different type of electricity generating resource—a hybrid coal and gas-fired fleet that relies on a different set of fuels—has the same effect of dictating the market shares of the different fuel types that comprise the nation's energy supply. The fact that this forced shift would occur within individual sources as opposed to across sources in the electricity generation sector does not rebut this conclusion.

Moreover, a coal-fired steam generating EGU is a fundamentally different type of plant than a steam generating EGU that fires both coal and natural gas. This is evidenced by the modifications and new infrastructure needed to turn a coal-fired EGU into a hybrid coal and gas-fired EGU, including modifications to or additions of burners to the boiler and potential changes to steam superheaters, reheaters, and economizer heating surfaces. The EPA believes that requiring a coal plant to turn itself into a different type of plant in order to burn a completely different fuel (i.e., natural gas) belies the Agency's earlier assertions that 40 percent natural gas co-firing is fuel switching akin to burning

²⁴² U.S. EPA, Response to Comments Document (April 2024). Chapter 2.7.2, page 101–02. Document ID No. EPA-HQ-OAR–2023–0072–8914.

²⁴³ *Id.*

²⁴⁴ *West Virginia*, 594 U.S. at 728.

lower sulfur coal in a coal-fired EGU or ultra-low sulfur diesel in a stationary compression ignition internal combustion engine. In these examples, a source is merely using a particular type of the fuel that the source was always intended to use, as opposed to a different fuel entirely. Therefore, the EPA is finalizing the finding that a BSER based on forcing a coal-fired EGU to become a partially natural gas-fired steam generating units shifts that unit's generation from coal to natural gas and is impermissible under the Court's precedent because it is an attempt to dictate the market share of coal versus natural gas.

The EPA acknowledges that this is a change in position from its earlier interpretation in the 2024 CPS that 40 percent natural gas co-firing is not generation shifting. As explained in the preceding discussion, the Agency believes its updated interpretation of *West Virginia* and its application to natural gas co-firing is the best one because it recognizes the distinction between traditional fuel switching and requiring a switch to different type of fuel. No party will have relied on the EPA's earlier interpretation in the 2024 CPS, given that that regulatory framework was never implemented.

Comments: Many commenters supported the EPA's proposed interpretation that natural gas co-firing constitutes impermissible generation shifting. Commenters stressed that generation shifting occurs whenever a facility is required to switch from burning one type of fuel to an entirely different type of fuel, regardless of the amount or percentage of co-firing required, because the EPA lacks authority either to require a plant to change to a different fuel type or to require it to become a different type of plant (*i.e.*, a hybrid coal and gas plant). Commenters asserted that 40 percent co-firing would require transformation into a different type of source because co-firing natural gas in a coal-fired boiler entails changes to that boiler that could include modifications to millions of dollars of equipment and additional costs associated with pipeline infrastructure needed to support co-firing.

Other commenters opposed to the EPA's interpretation that 40 percent natural gas co-firing is generation shifting argued that natural gas co-firing is a form of fuel switching, which the EPA has historically relied on under CAA section 111. Commenters contrasted fuel switching, a traditional technology-based control measure focused on improving the performance of individual sources, with the

generation shifting described by the Supreme Court in *West Virginia*, further asserting that co-firing does not entail a transformative expansion in the Agency's regulatory authority. Commenters explained that any new infrastructure and costs associated with natural gas co-firing are accounted for in the EPA's evaluation of the system's cost, which is a separate factor in the BSER analysis. Additionally, commenters asserted that it is common for a CAA section 111 standard to require extensive modifications to a plant, although the modifications associated with co-firing are relatively minor and far less extensive than those required for other control strategies at coal-fired plants, such as flue gas desulfurization or selective catalytic reduction.

Moreover, according to the commenters, co-firing does not involve the type of grid-wide reshuffling that *West Virginia* prohibits, either in concept or practice. There is no emissions or generation cap on affected sources, and the EPA does not assume any change in generation at co-firing sources. Therefore, commenters argued that the BSER is not premised on a shift of generation from co-firing sources to other sources. In addition, EPA's compliance modeling did not predict such a shift. Commenters also argued that fuel-switching is not generation shifting because a coal plant that is co-firing with 40 percent natural gas does not cease to exist as a coal plant, unlike the generation shifting addressed in *West Virginia*. Further, the EPA has always treated coal- and gas-fired steam generating EGUs as part of the same source category because the underlying type of source burning the fuel (a steam generating utility boiler) is the same, even though co-firing would require the use of some amount of a different fuel (natural gas instead of coal).

EPA Response: The EPA disagrees that co-firing natural gas in a coal-fired boiler is akin to the traditional pollution control measure under CAA section 111. As noted in this section of the preamble, natural gas co-firing is distinguishable from switching to lower sulfur coal or lower sulfur diesel, or from requiring a source to limit itself to one type of fuel. The EPA takes no position in this rule about these forms of fuel switching vis-à-vis *West Virginia*. But the EPA is, in this final rule, finding that it is not permissible for a BSER to be based on the use of an entirely different fuel from what a source was designed and configured to accept. Given that modifications are necessary to accommodate co-firing at 40 percent, this level of co-firing, in particular, is

distinct from the traditional forms of fuel switching that the EPA has employed under CAA section 111. The cost of those modifications is not as relevant as the fact that they occur: The EPA considers the need for modifications as part of determining whether 40 percent co-firing is an appropriate system of emission reduction, as opposed to whether it is the *best* system of emission reduction based on cost and the other factors of CAA section 111(a)(1). That is, because a coal-fired source must transform itself to co-fire natural gas at 40 percent, such co-firing is not fuel switching but is rather shifting generation to a different type of source. While commenters countered that natural gas co-firing is not generation shifting because the source remains a fossil fuel-fired steam generating boiler that continues to fire some amount of coal, the EPA does not believe that it is necessary to shift generation from a boiler to a combustion turbine in order to effectuate impermissible generation shifting. Under the commenters' logic, the EPA's requiring 99 percent natural gas co-firing would still not be considered shifting generation because one percent would still be some amount of coal still being utilized. Rather, the EPA's position is that generation shifting occurs when a system of emission reduction requires a source to use an entirely different type of fuel, particularly when the source was not designed to accept the new type of fuel. The effect of such an approach is that the EPA effectively dictates the fuel mix used in the nationwide energy system, which the Supreme Court held in *West Virginia* the EPA is not permitted to do.

b. Energy Requirements

Even if 40 percent natural gas co-firing could be evaluated as a potential BSER, which it cannot be for the reasons discussed in section IV.A.2.a of this preamble, the EPA further determines that the adverse impacts on the energy system are unreasonable and therefore that 40 percent co-firing cannot be the BSER for medium-term coal-fired EGUs. As part of determining the BSER, the EPA considers energy requirements.²⁴⁵ As discussed in section II.C.3 of this preamble, energy requirements may include the impacts, if any, of the air pollution controls on the source's own energy needs.²⁴⁶ The EPA may further assess, as part of the energy

²⁴⁵ 42 U.S.C. 7411(a)(1).

²⁴⁶ See, e.g., 91 FR 1910, 1937 (January 15, 2026) (energy requirements consideration includes auxiliary/parasitic load requirements to run a potential BSER control for fossil fuel-fired combustion turbines).

requirements consideration, any impacts of a system of emission reduction on the energy system on a sector-wide, regional, or national basis, as appropriate.²⁴⁷ As part of such assessment, the EPA has considered potential adverse impacts on the reliability of the bulk power system and its ability to deliver affordable and consistent electricity to end users.²⁴⁸ Similarly, the EPA has considered whether potential BSERs might have adverse impacts on the supply or cost of natural gas, which is used in many applications throughout the nation's energy system, including for electricity generation, industrial applications, and transportation.²⁴⁹ In this action, the Agency's determination of unreasonable adverse impacts has focused on the sector-wide strain that requirements based on 40 percent natural gas co-firing could place on the availability of natural gas. The demand for natural gas, as explained below, is anticipated to be greater than previously projected. Under these circumstances, diverting natural gas for use in natural gas in steam generating boilers could result in an unreasonable impact on the energy system because it reduces the availability of gas for other, more efficient uses, including for electricity generation in combustion turbines.

The analyses the EPA conducted and relied on to assess the 2024 CPS's projected impacts showed only incremental increases in electricity demand: a 13 percent increase between 2000 and 2022, with demand staying relatively flat over the 2007–2022 period. As discussed in section III.C of this preamble, during this period, the share of coal-fired electricity decreased in both absolute and relative terms, while both natural gas-fired net generation and wind and solar net generation increased. Natural gas surpassed the total net generation from coal on an absolute basis in 2016, while renewables surpassed the total net generation from coal on an absolute basis in 2022.²⁵⁰ The information that the EPA analyzed for purposes of the 2024 CPS indicated that the sector trend of moving away from coal-fired generation was likely to continue, that the share of electricity generation from

natural gas-fired sources would likely decline, and that the share of generation from non-emitting technologies would likely continue to increase. One important data point for purposes of the 2024 CPS was that the Agency anticipated that the recent trend of retirements of coal-fired capacity (at an average annual rate of 10 GW from 2015 to 2023) would continue due to the economics of coal-fired generation. At that time, more than half of the operating coal-fired steam generating units had announced retirement or plans to convert to natural gas by 2039.²⁵¹ Thus, the EPA predicated the Agency's consideration of energy requirements associated with 40 percent natural gas co-firing in the 2024 CPS on an assumption of a continued and significant decline in the number of coal-fired EGUs.

In contrast, updated information and analysis of power sector trends indicate a significantly different landscape moving forward. In particular, as outlined in section III.C of this preamble, the projections of electricity markets over the coming decades indicate higher electricity demand due to a number of factors. Recent analyses further predict that this higher electricity demand will, in turn, result in higher utilization of coal and gas fired resources²⁵² than projected under the 2024 analysis underpinning the 2024 CPS.²⁵³ The EPA's updated baseline projections indicate that coal capacity will level off at 100 GW by 2040, in contrast to the 2024 analysis's prediction of continuing to decline from the current level to 52 GW in 2035 and 42 GW in 2040. Similarly, the updated baseline projections indicate that new NGCC additions would be 155 GW in 2035 and 217 GW by 2040, contrasting earlier projections that total just 26 GW in 2035 and 2040. The EPA's updated baseline modeling in the 2025 analysis also projects significantly higher natural gas consumption, even absent the 2024 CPS requirements, with Henry Hub gas prices projected at 18 percent higher by 2030 and 52 percent higher by 2035.

These significant changes in the power sector complement the EPA's reevaluation of the demands natural gas co-firing puts on both individual coal-fired steam generating units and the energy system more broadly, informing the EPA's analysis and determination here. While coal-fired steam generating

units may use small amounts of natural gas for startup purposes, relatively few sources use natural gas in proportions that would have been consistent with the requirements for medium-term coal-fired steam generating units in the 2024 CPS. Therefore, the co-firing-based standards would result in a significant increase in the demand for natural gas. The 2024 CPS failed to adequately address the impacts of this increase, even before the updated projections of coal capacity and natural gas demand that are now available.

Based on the EPA's reexamination of the facts and conclusions in the 2024 CPS and the analysis supporting this rulemaking, the Agency now finds that 40 percent natural gas co-firing is not the BSER because of the potential for unreasonable adverse impacts related to energy requirements.²⁵⁴ The EPA's two reasons for this determination—diverting the volume of natural gas needed to support 40 percent co-firing from other uses in the energy system could have significant impacts and natural gas is more efficiently used in natural gas-fired combustion turbines—are described in further detail below. The EPA is determining that the collective effect of these two phenomena could result in unreasonable adverse impacts on the energy system by forcing natural gas, the availability of which is anticipated to become more constrained, to be used in a relatively inefficient manner. The EPA has also balanced these energy impacts against the relatively small amount of CO₂ reductions available from 40 percent natural gas co-firing (16 percent) and the other relevant considerations under CAA section 111(a)(1) (*i.e.*, cost and nonair quality health and environmental impacts) in determining that such co-firing could not be the BSER for medium-term coal-fired steam generating units.

i. 2024 CPS Requirements Reduce the Availability of Natural Gas for Other Purposes

The EPA now finds that the potentially large demand for natural gas associated with 40 percent co-firing in coal-fired steam boilers is unreasonable and could produce a significant adverse consequence related to energy requirements. As explained in the June 2025 NPRM, the EPA believes that coal-fired steam generating unit capacity and generation will now continue to comprise a substantial portion of the

²⁴⁷ See, e.g., *Sierra Club*, 657 F.2d at 330 (interpreting energy requirements factor as including consideration of effects “on the grand scale”); see also 84 FR 32520, 32534 n.152 (July 8, 2019) (“The EPA may consider energy requirements on both a source-specific basis and a sector-wide, region-wide, or nationwide basis.”).

²⁴⁸ See, e.g., 80 FR 64510, 64594 (October 23, 2015); 80 FR 64662, 64721 (October 23, 2015).

²⁴⁹ See 84 FR 32520, 32544–46 (July 8, 2019).

²⁵⁰ Document ID No. EPA–HQ–OAR–2023–0072–8920.

²⁵¹ 89 FR 39798, 39816–18 (May 9, 2024).

²⁵² See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2025–0124).

²⁵³ U.S. EPA, RIA for 2024 CPS, Document ID No. EPA–HQ–OAR–2023–0072–8913.

²⁵⁴ For details on the analysis, see memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2025–0124).

nation's electricity supply.²⁵⁵ A number of coal-fired steam generating units are delaying or canceling scheduled retirements in light of increasing electricity demand, the changes in tax incentives for various types of electricity-generating resources in the OBBBA, and Administration actions to support the continued operation of coal-fired capacity.^{256 257} Furthermore, the EPA's modeling projections show a substantial capacity of coal-fired steam generating units operating past 2032.²⁵⁸ The EPA's updated modeling estimates that 100 GW coal capacity will be operational in the 2035 model run year,²⁵⁹ whereas the EPA projected 52 GW of coal capacity would exist by 2035 in the 2024 CPS analysis.²⁶⁰ While it is the case that not all 100 GW would necessarily be subject to the 40 percent co-firing based standard, it is very likely that the amount of capacity that would be so subject is significantly higher than the EPA projected in the 2024 CPS. Because much more coal capacity is anticipated to remain operational than was previously projected in the 2024 CPS modeling (almost twice as much in 2035), it is reasonable to expect that more units could be subject to a standard of performance based on 40 percent co-firing with natural gas. Thus, the total volume of natural gas that sources would need to implement co-firing could be both substantial and greater than previously believed.

More specifically, using the latest available data from the EIA, the U.S. electric sector comprised approximately 174 GW of coal-fired EGUs in 2024, which collectively consumed approximately 6.98 quadrillion Btus of energy. According to operation planning data reported to the EIA, 146 GW of this 174 GW coal capacity in the U.S. electric sector are expected to remain in service through 2032.²⁶¹ If these 146

GW of units maintained their 2024 utilization levels and co-fired 40 percent natural gas, they would draw more than 2.3 quadrillion Btus of natural gas. For context, the entire U.S. electric sector consumed approximately 13.9 quadrillion Btus of natural gas in 2024 (*i.e.*, implementing the co-firing standard would require an increase of 17 percent of 2024's total gas consumption in the U.S. electric sector).

As noted above, there are many critical demands for natural gas other than for electricity generation, including for industrial uses, residential use, and as a transportation fuel. According to the EIA, total demand for all uses of natural gas was approximately 33 quadrillion Btus in 2024. Furthermore, the EIA projects that the demand for natural gas, driven by domestic consumption and liquefied natural gas exports, will grow both in the near term²⁶² as well as in the long term.²⁶³ EIA forecasts record high industrial and power sector natural gas consumption by 2027^{264 265} and projects a 30 percent increase in LNG exports by 2027 as five new LNG export projects begin operation.²⁶⁶ This increasing demand stresses supply, resulting in an increase of projected costs of natural gas. Henry Hub gas prices in 2024 dollar-years are projected to rise to \$4.12/MMBtu by 2030 and \$5.26/MMBtu by 2035.²⁶⁷ In most model run years, EPA's analysis indicates that the cost of natural gas would be higher with the 2024 CPS in place as compared to the scenario absent the requirements of 2024 CPS.²⁶⁸ Also, updated EPA projections show substantial increases in natural gas combustion turbine generation when compared to prior EPA projections

scheduled retirements. U.S. EIA. Form 860 data. Available at: <https://www.eia.gov/electricity/data/eia860/>.

²⁶² U.S. Energy Information Administration. EIA expects higher wholesale U.S. natural gas prices as demand increases. Available at: <https://www.eia.gov/todayinenergy/detail.php?id=64344>.

²⁶³ U.S. Energy Information Administration, Annual Energy Outlook 2025. Available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2025&cases=ref2025&sourcekey=0>.

²⁶⁴ U.S. Energy Information Administration. U.S. industrial natural gas consumption expected to hit records in 2026 and 2027. Available at: <https://www.eia.gov/todayinenergy/detail.php?id=67686>.

²⁶⁵ U.S. Energy Information Administration. Natural gas for power generation flat this summer, record high expected in 2027. Available at: <https://www.eia.gov/todayinenergy/detail.php?id=67725>.

²⁶⁶ U.S. Energy Information Administration. U.S. natural gas exports to grow nearly 30% by 2027 as LNG facilities ramp up. Available at: <https://www.eia.gov/todayinenergy/detail.php?id=67484>.

²⁶⁷ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

²⁶⁸ *Id.*

conducted for the 2024 CPS.²⁶⁹ Using a large volume of natural gas in coal-fired steam generating units when there are already increasing demands on the natural gas supply (from, among other things, higher domestic demand, including due to increased combustion turbine buildout, and greater liquefied natural gas exports) further exacerbates the potential for adverse energy impacts, as evidenced by the natural gas price increases associated with the 2024 CPS requirements. Therefore, the EPA finds that diverting the volume of natural gas necessary to support 40 percent natural gas co-firing from other uses is unreasonable because it could result in a significant adverse impact on the energy system, such that 40 percent natural gas co-firing is not the BSER.

Comments: Some commenters stated that using large quantities of natural gas to fuel steam generating units is extraordinarily wasteful at a societal level. A commenter also argued that the adverse impacts on the energy system are especially unreasonable when compared to the relatively small CO₂ reductions—16 percent—that are available from 40 percent natural gas co-firing.

Other commenters expressed concern that the EPA's objections to the 40-percent co-firing standard based on gas supply were unsupported. Commenters asserted that the EPA lacked data in the June 2025 NPRM to sustain the argument that there is insufficient natural gas supply to support the 40 percent co-firing standard.

EPA Response: The EPA agrees with commenters who stated that the impacts of 40 percent natural gas co-firing on the energy system are unreasonable, especially given the relatively small amount of CO₂ reductions available. The Agency also notes that the Agency has broad discretion in weighing the statutory considerations under CAA section 111(a)(1) to determine the BSER.²⁷⁰ The rationale included in the June 2025 NPRM and further corroborated by the arguments and data included in this final rule justifies the EPA's finding that 40 percent natural gas co-firing would have adverse consequences for the energy system: the co-firing standard could strain the supply of natural gas and reduce its availability for other purposes. Although several commenters cited projected natural gas use and supply figures from the 2024 CPS to support

²⁶⁹ *Id.*

²⁷⁰ See *Lignite Energy Council*, 198 F.3d at 933 ("Because section 111 does not set forth the weight that should be assigned to each of these factors, we have granted the agency a great degree of discretion in balancing them.").

²⁵⁵ 90 FR 25752, 25772, 25774 (June 17, 2025).

²⁵⁶ D. Proctor, *U.S. Coal Plants Get Reprieve as Market and Policies Change*, Power (February 6, 2025). Available at: <https://www.powermag.com/u-s-coal-plants-get-reprieve-as-market-and-policies-change/>.

²⁵⁷ See, e.g., U.S. Department of Energy, 2026 DOE 202(c) Orders. Available at: <https://www.energy.gov/ceser/2026-doe-202c-orders>.

²⁵⁸ Under the CPS, coal-fired steam generating units operating past 2032 and choosing to permanently cease operation before January 1, 2039, would have had a standard of performance based on 40 percent natural gas co-firing.

²⁵⁹ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

²⁶⁰ U.S. EPA. RIA for 2024 CPS. Document ID No. EPA-HQ-OAR-2023-0072-8913. Table 3-14.

²⁶¹ The survey Form EIA-860 collects generator-level specific information about existing and planned generators and associated environmental equipment at electric power plants, including

arguments that ample gas would be available for co-firing, such comments do not consider the changed circumstances of the energy sector. The EPA cited these changed circumstances in the June 2025 NPRM and, in this final rule, is adding further information that has become available since the June 2025 NPRM's publication in Spring 2025. As discussed in this preamble, the EPA's updated analysis shows that the total volume of natural gas that affected sources would require to implement the 2024 CPS's co-firing standard is 17 percent of total power sector gas consumption in 2024. This increase is over 20 percent higher than the percent increase estimated under the 2024 analysis using the same approach (*i.e.*, assuming all units active in 2032 co-fire 40 percent natural gas and maintain 2024 utilization levels). This substantial increase in natural gas demand would place upward pressure on natural gas prices.

Moreover, the increase in natural gas demand from co-firing units would now be occurring in the context of significantly higher natural gas prices. The EPA's updated analysis projects that natural gas prices will increase significantly more than the Agency predicted in its the 2024 analysis of the final 2024 CPS (50 percent higher in 2035 than what was projected under the 2024 analysis), meaning that the impact of the 2024 CPS on the price of natural gas would be greater. The updated analysis projects that, in a scenario with the 2024 CPS remaining in place, the Henry Hub price of gas would increase nine percent in 2035,²⁷¹ while the 2024 analysis projected that the Henry Hub price of gas would have increased only three percent as a result of the 2024 CPS in the same year.²⁷² In sum, the anticipated constraints on natural gas availability combined with substantial increases in natural gas demand mean that diverting a large volume of natural gas to 40 percent natural gas co-firing in coal-fired steam generating units would further exacerbate the already-strained natural gas market.

ii. Inefficiency of 40 Percent Natural Gas Co-Firing

The EPA is further concluding that the energy requirements associated with 40 percent natural gas co-firing in a steam generating EGU are unreasonable because such co-firing would be an inefficient use of the comparatively

constrained (relative to previous assumptions) availability of natural gas, particularly compared to use in a combustion turbine. This is a relevant consideration because the two types of units provide the same product—electricity—and because they are being covered by a single regulatory regime.²⁷³ The EPA therefore believes that it should attempt to optimize the use of natural gas amongst the affected sources. Applying 40 percent natural gas co-firing would result in a decrease in boiler efficiency by approximately two percent (to a total boiler efficiency of less than 40 percent) due to the higher hydrogen content of natural gas relative to coal. In the 2024 CPS, the EPA argued that this decline in efficiency could be partially offset by decreases in auxiliary power demand related to coal handling and emissions controls but acknowledged that uncertainty remained about whether this offset would be true in all circumstances.²⁷⁴ In the EPA's unit-level cost analysis for the 2024 CPS, the Agency assumed a two percent decrease in boiler efficiency would result in one percent overall heat rate penalty for the unit.²⁷⁵ Thus, for a theoretical coal-fired steam generating unit with a heat rate of 10,000 British thermal units per kilowatt-hour (Btu/kWh), the EPA estimates that the heat rate increases when co-firing to 10,100 Btu/kWh.

Comparatively, the use of large amounts of natural gas for combustion in combined cycle EGUs is more efficient. New natural gas-fired combined cycle EGUs generally have an operating efficiency of greater than 50 percent. If the natural gas that would otherwise be used for co-firing in a steam generating EGU were instead used in a combined cycle unit with a heat rate of 6,700 Btu/kWh, the combined effective heat rate of the coal-fired EGU and gas-fired combined cycle unit would be approximately 8,400 Btu/kWh, which is substantially less than the coal-fired steam generating unit with 40 percent natural gas co-firing. In addition, effective combined heat rates would be lower if the natural gas were used in a simple cycle combustion turbine EGU.²⁷⁶ As described in section IV.A.2.b.i of this preamble, the

availability of natural gas is projected to be relatively constrained due to a combination of increases in domestic demand and increases in liquefied natural gas exports. Given these circumstances, the EPA believes it is reasonable to consider the relative efficiency of natural gas use amongst regulated sources when determining BSER. When looking at the affected source category as a whole, the EPA finds that impacts on the energy system of 40 percent natural gas co-firing are unreasonable because it is significantly more efficient to use natural gas to generate electricity in a combustion turbine, rather than co-firing natural gas in a steam generating boiler.

Comments: Some commenters supported the EPA's proposed determination that the Agency can or must consider the relative efficiency of co-firing natural gas in a coal-fired steam generating unit versus in a combustion turbine. One commenter stated that co-firing natural gas in a boiler is less efficient than burning natural gas in either a combined cycle system or a simple cycle turbine. Another commenter noted that although choosing to co-fire may be reasonable for individual units due to source-specific circumstances, co-firing is not a reasonable practice on a fleetwide basis.

Other commenters refuted the basis of comparison between heat rates of natural gas co-firing units and NGCC due to the technological differences between an NGCC and a steam unit. Some commenters questioned the relevance of this comparison and asserted that the EPA should consider whether natural gas co-firing reduces emissions from the affected units, not whether a different type of unit can use natural gas more efficiently.

EPA Response: The EPA believes the relative efficiency of steam generating boilers and combustion turbines is relevant because the energy requirements factor of CAA section 111(a)(1) requires the Agency to consider adverse impacts on the energy system.²⁷⁷ The interplay between different potential uses of a limited fuel to generate electricity is pertinent to this inquiry. Moreover, the EPA believes this is a relevant consideration because coal-fired steam generating units and NGCC units were addressed as part of a common regulatory framework under the 2024 CPS.²⁷⁸ Thus, the Agency's

²⁷³ See 40 CFR part 60, subparts TTTT and TTTTa.

²⁷⁴ 89 FR 39798, 39895 (May 9, 2024).

²⁷⁵ See spreadsheet entitled *Unit-Level Cost and Reduction Estimates for Natural Gas Co-firing Final Rule* attached to Document ID No. EPA-HQ-OAR-2023-0072-9095.

²⁷⁶ For a representative combustion turbine with a heat rate of 8,700 Btu/kWh, the combined effective heat rate would be approximately 9,500 Btu/kWh.

²⁷⁷ See preamble sections II.C.3 and IV.A.2.b for discussion of the EPA's interpretation and application of CAA section 111(a)(1)'s "energy requirements" factor.

²⁷⁸ See 40 CFR part 60, subparts TTTT and TTTTa.

²⁷¹ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

²⁷² Docket ID No. EPA-HQ-OAR-2023-0072, Table 3-12 in the 2024 RIA.

regulation should acknowledge the competing uses of natural gas by the affected sources. Directing natural gas to be used in a less efficient manner, *i.e.*, in a steam generating boiler, is not a reasonable use of this resource. This is especially the case when the availability of natural gas is anticipated to be relatively constrained due to multiple competing uses, both within and beyond electricity generation. Furthermore, the EPA has considered the decreased efficiency of a coal unit co-firing 40 percent natural gas relative to the CO₂ reductions available from such co-firing and has determined that the adverse impacts are not reasonable given reductions in emission rate (*e.g.*, lb CO₂/MWh-gross) of only 16 percent.

c. Infrastructure

Finally, the EPA is finalizing the determination that a degree of emission limitation based on 40 percent natural gas co-firing is not achievable because it is unlikely the necessary pipeline infrastructure can be deployed by the compliance date of January 1, 2030. In the 2024 CPS, the EPA estimated the maximum aggregate amount of pipeline capacity at nearly 14.7 billion cubic feet per day for implementing 40 percent natural gas co-firing, which would require approximately 3,500 miles of pipeline.²⁷⁹ The 2024 CPS further assumed that sources could obtain the permits necessary to construct these pipelines in one year and that the actual construction would require one year or less.²⁸⁰ While the timelines in the 2024 CPS were based on average permitting, approval, and construction timeframes,²⁸¹ the EPA now believes that projects facing reasonably foreseeable adverse conditions could take up to five years for approval and construction.²⁸²

Further, the EPA now projects that much more coal-fired capacity will remain in operation than previously anticipated, meaning that more natural gas pipeline projects would have to be undertaken to support 40 percent natural gas co-firing at a nationwide level.²⁸³ This increase would strain existing permitting, planning, and implementation resources and make completion of these projects by the

January 1, 2030, compliance date less likely. Furthermore, the involvement of external parties in deploying such a large amount of infrastructure would necessarily include its own complications and delays. Additionally, the EPA did not consider that the large number of these projects, or that the new pipelines necessary to support co-firing, would be in addition to pipeline projects necessary to meet the increasing demand for natural gas for other purposes (*e.g.*, liquefied natural gas exports and other domestic uses like powering AI). Specifically, updated EPA power sector modeling that incorporates higher demand and the impacts of the OBBBA estimates 100 GW installed coal capacity by 2035,²⁸⁴ almost twice as much as projected in the final 2024 CPS analysis.²⁸⁵ This would require an estimated 90 percent more gas by volume to meet the 40 percent co-firing standard. By that same year, modeling projections estimate an overall gas demand of 16.4 trillion cubic feet with an average delivered price of \$4.92/MMBtu.²⁸⁶ Under the earlier analysis, the lower demand environment and the impact of the IRA resulted in falling natural gas consumption over time in the power sector. The updated analysis, driven by the current higher demand environment and the impacts of the OBBBA, projects increasing natural gas consumption over the forecast period. As a result, the updated forecast projects total gas consumption in 2035 will be 77 percent higher as compared to the forecast used for the 2024 CPS.

The EPA now believes that these factors make it unlikely for the necessary additional pipeline infrastructure for 40 percent natural gas co-firing to be deployed by the January 1, 2030, compliance date. Therefore, the EPA is finalizing the determination that the degree of emission limitation in the 2024 CPS for medium-term coal-fired steam generating EGUs is not achievable.

Comments: Commenters supporting the EPA's determination generally expressed concern with the feasibility of the January 1, 2030, compliance deadline for 40 percent natural gas co-firing in the 2024 CPS, stating that this deadline was not achievable because of the required time for permitting and construction of natural gas pipelines, particularly interstate pipelines. These commenters explained that the EPA's

assumptions in the 2024 CPS about the amount of time it takes to design, permit, and construct natural gas lateral pipelines were unrealistically optimistic. Other commenters, however, supported the compliance deadline for the 40 percent natural gas co-firing based on the examination of national averages in 2024.

EPA Response: The EPA agrees with the former and disagrees with the latter commenters. As detailed in this section of the preamble, the EPA now believes that projects facing reasonably foreseeable adverse conditions could require up to five years for approval and construction, particularly in light of increased demand for natural gas that could further extend approval and construction periods.²⁸⁷

As noted by supportive commenters, a longer approval and construction timeline for pipelines would be more appropriate based on the longest project approval timeline for any project reviewed (Carty Lateral Project) combined with the longest construction timeline for any project reviewed (Coastal Bend Header), which totals to 49 days short of five years. Such an implementation timeframe would, in contrast to the timeframe the EPA promulgated in the 2024 CPS, ensure that regulated entities facing reasonably foreseeable delays in both project approval and construction could still timely comply with the applicable requirements. Furthermore, assuming the longer timeline is reasonable because the increase in the use of natural gas for other purposes will likely necessitate additional pipeline buildout for these purposes, which will further delay pipeline approval and construction time for the electric power sector.

The EPA now believes that these factors make deployment of the necessary additional pipeline infrastructure for 40 percent natural gas co-firing by the January 1, 2030, compliance date unlikely. Therefore, the EPA is finalizing the determination that the degree of emission limitation in the 2024 CPS for existing medium-term coal-fired steam generating EGUs is not achievable.

d. Conclusion

In summary, the EPA is finalizing the repeal of the requirements of the emission guidelines pertaining to medium-term coal-fired steam generating units because natural gas co-

²⁷⁹ 89 FR 39798, 39893 (May 9, 2024).

²⁸⁰ *Id.* at 39893 n.682.

²⁸¹ *Id.* at 39893.

²⁸² Documentation for the Lateral Cost Estimation (2024), ICF International, p. 42. Attachment to Greenhouse Gas Mitigation Measures for Steam Generating Units. Document ID No. EPA-HQ-OAR-2023-0072-9095.

²⁸³ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2025-0124).

²⁸⁴ *Id.*

²⁸⁵ U.S. EPA. RIA for 2024 CPS. Document ID No. EPA-HQ-OAR-2023-0072-8913. Table 3-14.

²⁸⁶ See memorandum entitled *Trends Relating to Fossil Fuel-fired Electric Generating Units* in the docket for this rulemaking (Document ID No. EPA-HQ-OAR-2025-0124).

²⁸⁷ Documentation for the Lateral Cost Estimation (2024), ICF International, p. 42. Attachment to Greenhouse Gas Mitigation Measures for Steam Generating Units. Document ID No. EPA-HQ-OAR-2023-0072-9095.

firing in a coal-fired steam generating EGU is impermissible generation shifting, the energy requirements associated with 40 percent natural gas co-firing are unreasonable, and the degree of emission limitation specified in the 2024 CPS is not achievable. As discussed in this section of the preamble, the EPA is addressing only 40 percent natural gas co-firing and implementation by January 1, 2030, because those were the requirements under the 2024 CPS. This action does not address any potential alternative BSERs or implementation timeframes such as lower rates of co-firing or a later implementation date. The EPA considered whether to analyze and promulgate potential alternatives and determined it is not necessary to do so under the circumstances presented here.

3. Requirements for Existing Natural Gas- and Oil-Fired Steam Generating Units

The EPA is finalizing the repeal of the requirements of the emission guidelines pertaining to natural gas- and oil-fired steam generating units. In the 2024 CPS, the EPA finalized routine methods of operation and maintenance as the BSER for intermediate load and base load natural gas- and oil-fired steam generating units and uniform fuels as the BSER for low load natural gas- and oil-fired steam generating units. Because those BSERs were consistent with the current operations at most sources (*i.e.*, business-as-usual), there was no associated additional cost. In addition, those BSERs resulted in a degree of emission limitation that would have led to few, if any, emission reductions for any of the units. The EPA did not propose to repeal the BSER determinations and degrees of emission limitation for those sources. However, the EPA proposed to repeal the requirements in the emission guidelines for natural gas- and oil-fired steam generating units because requiring States to develop, submit, and implement state plans solely for natural gas- and oil-fired steam generating units would be an inefficient use of State resources, as these sources comprise a relatively small part of the source category and regulating them would have little environmental benefit.

Comments: Several commenters supported the EPA's proposal in the June 2025 NPRM to repeal the portions of the emission guidelines applicable to oil- and natural gas-fired steam generating units. These commenters generally agreed that requiring States to develop and submit state plans for these units alone would be an inefficient use of limited State resources that would

present an undue administrative burden. Commenters further asserted that, if regulating these sources would have no significant benefit in terms of emission reductions, then such regulation would not be of reasonable cost. Additionally, some commenters explained that there is no need for the EPA to retain the emission guidelines for these units because the BSERs for oil- and natural gas-fired steam generating units are consistent with business-as-usual operation.

Other commenters opposed repealing the emission guidelines for these units for several reasons. Those commenters asserted that CAA section 111(d) requires the EPA to promulgate emission guidelines for existing sources if the Agency has promulgated standards of performance for the corresponding new sources. Commenters argued that standards of performance currently exist for GHG emissions from new oil- and natural gas-fired steam generating units, and that the EPA cannot override the statutory directive to have regulations for existing units based only on the Agency's judgment that state plans would not be prudent. Commenters stated that this is particularly the case because the EPA has not identified any flaw with the BSER determinations or emission guidelines for oil- and natural gas-fired steam generating units. The commenters further asserted that the EPA's justification for repealing the emission guidelines under CAA section 111 (*i.e.*, requiring States to submit plans covering just these units would be "imprudent" and an inefficient use of State resources) is not legally cognizable and that, regardless, the presumptive standards for these units would be straightforward and the EPA has not explained why business-as-usual standards would require expenditure of resources on engineering analyses. Commenters suggested that the 2024 CPS standards cover approximately 200 natural gas-fired steam generating units and 30 oil-fired units, that these units contribute an outsized amount of pollution as compared to electricity generation, and that the emission guidelines provide important protections against increased emissions as these units age. Finally, commenters asserted that it is not, in fact, a significant burden for States to prepare plans to regulate these units and that the EPA has not provided evidence to the contrary. Commenters stated that if a State finds preparing a plan too burdensome or otherwise chooses not to submit a plan, the EPA will issue a federal plan instead.

EPA Response: The EPA acknowledges these comments but continues to believe that it is not a reasonable use of States' resources, nor the Agency's (in the case of a federal plan), to develop and submit plans for oil- and natural gas-fired steam generating units while the Agency is repealing the requirements for all other existing fossil fuel-fired power plants. Natural gas- and oil-fired steam generating units represent a very small portion of the source category from both a generation and an emissions perspective. In 2023, natural gas- and oil-fired steam generating units accounted for 1.2 percent of total electric generation and 3.5 percent of power sector CO₂ emissions in the U.S.²⁸⁸ The EPA's forecasts of power sector behavior using the Integrated Planning Model in the 2025 Reference Case projects that this share of both generation and emissions in the U.S. will decrease even further over the forecast period.²⁸⁹

Although the EPA is not finding that the BSERs or presumptive standards in the 2024 CPS were unreasonable or inappropriate for these sources, the Agency believes that it would be unreasonable to require States to develop state plans solely for these units. Throughout the more than 50-year period that the EPA has promulgated CAA section 111 regulations establishing NSPS for new sources and emissions guidelines for existing sources,²⁹⁰ the EPA's regulatory approach has been to apply a rule of reason in determining which air pollutants and which source categories to regulate. This approach is consistent with CAA section 307(d)(9)(A), which provides that promulgation of standards of performance under CAA section 111 is subject to the CAA section 307(d)(9)(A) arbitrary and capricious standard for judicial review. *See American Electric Power Co. v. Connecticut*, 564 U.S. 410, 424, 427 (2011). For example, in 1977, EPA listed the stationary gas turbine source category,²⁹¹ and proposed standards of performances for NO_x and SO₂ because the source category emitted those pollutants in large quantities and reasonably priced controls for them

²⁸⁸ Based on eGRID2023 data. Available at: <https://www.epa.gov/egrid/detailed-data>.

²⁸⁹ EPA 2025 Reference Case. Available at: <https://www.epa.gov/power-sector-modeling>.

²⁹⁰ The EPA first listed source categories and promulgated standards of performance for them in 1971, 36 FR 5931 (March 31, 1971) (listing initial source categories); 36 FR 24876 (December 23, 1971) (promulgating initial standards of performance).

²⁹¹ 42 FR 53657 (October 3, 1977).

were available, but did not propose standards for HC or CO because those emissions were “relatively low” when the turbines were operated at peak capacity or PM because those emissions were “minimal.”²⁹² In 1979, EPA finalized the standards for NO_x and SO₂.²⁹³ EPA has similarly applied a rule of reason in determining whether to regulate particular source categories. For example, after enactment in the 1977 CAA Amendments of CAA section 111(f), which directed EPA to list source categories of major stationary sources and promulgate NSPS for them on a specified schedule, EPA promulgated a list of source categories and assigned each one a priority for action. However, EPA noted that “if further study indicates that an NSPS would have little or no effect on emissions, or that an NSPS would be impractical, a source category would be given a lower priority or removed from the list.”²⁹⁴

In applying a standard of reasonableness here, the EPA anticipates that the business-as-usual BSERs and presumptive standards finalized in the 2024 CPS would result in little to no emission reductions, while at the same time the development of state plans involves an expenditure of resources by States and regulated entities, including time and money for developing compliance strategies, conducting public hearings and meaningful engagement, drafting permits or other legal instruments, and getting necessary legislative or other approvals.²⁹⁵ Therefore, the pragmatic considerations outweigh any potential regulatory benefit: requiring state plans to address only these sources at the same time the Agency is repealing the requirements for all other existing sources, and when the BSERs and presumptive standards of performance in the 2024 CPS would not, in general, have resulted in changes in operations or emissions, would not be reasonable.²⁹⁶ Thus, the EPA is

finalizing the repeal of the requirements of the emission guidelines pertaining to natural gas- and oil-fired steam generating units.

Moreover, as discussed in this section of the preamble, the EPA is simultaneously issuing a supplemental proposal soliciting comment on additional reasons beyond those on which the EPA solicited comment in the primary proposal in the June 2025 NPRM to repeal the legal basis for regulating GHG emissions from fossil fuel-fired power plants under CAA section 111. If finalized as proposed, this subsequent action would abrogate the need to regulate GHG emissions from natural gas- and oil-fired steam generating EGUs entirely. If the EPA does not finalize the determination that the Agency lacks authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111 as proposed, the EPA would revisit the need for requirements for natural gas- and oil-fired steam generating EGUs.

4. Conclusion

Because the EPA is finalizing the repeal of the BSER determinations and related requirements for existing long-term and medium-term coal-fired steam generating units and is further finalizing the repeal of the requirements for existing oil- and natural gas-fired steam generating units, the Agency is finalizing repeal of the emission guidelines for steam generating units in 40 CFR part 60, subpart UUUU, in their entirety.

B. Repeal of the CCS-Based Requirements for Coal-Fired Steam Generating Units Undertaking a Large Modification

In the 2024 CPS, the EPA finalized revisions to the standards of performance for coal-fired steam generating units that undertake a large modification (*i.e.*, a modification that increases the unit’s hourly emission rate by more than 10 percent) to be consistent with the 90 percent CCS requirements for existing coal-fired steam generating units. As discussed in section IV.A.1 of this preamble, the EPA is finalizing the determination that 90 percent CCS is not an adequately demonstrated system of emission reduction and that the cost of 90 percent CCS is not reasonable. For these reasons, the EPA is also finalizing repeal

of the CCS-based standards of performance for coal-fired steam generating units undertaking a large modification in 40 CFR part 60, subpart TTTT.

C. Partial Repeal of the 2024 Standards for New Combustion Turbine EGUs

The EPA is finalizing the repeal of the phase 2 CCS-based standards for new base load stationary combustion turbine EGUs in 40 CFR part 60, subpart TTTTa. The EPA’s basis for this action is that 90 percent CCS has not been adequately demonstrated, and the costs are not reasonable for new base load combustion turbines. The EPA is finalizing the determination that the CCS-based standards are not achievable as it is unlikely that the infrastructure necessary can be deployed by the January 1, 2032, compliance date. In the June 2025 NPRM, the EPA solicited comment in general on the efficiency-based standards for intermediate load and base load turbines. While the EPA received substantial comments that affected sources may not be able to achieve these standards, the EPA is not addressing these comments at this time.

1. Phase 2 CCS-Based Requirements for New Base Load Combustion Turbines

In the 2024 CPS, the EPA determined the second component of the BSER for new base load combustion turbines to be 90 percent CCS. The EPA determined that 90 percent CCS, including the 90 percent CO₂ capture component, was adequately demonstrated based on extrapolation from the evidence for 90 percent CCS on coal-fired steam generating units and additional examples and planned projects on combustion turbines. The EPA also argued the costs were reasonable and that the other considerations for BSER were satisfied. Based on application of the 90 percent CCS BSER to new base load combustion turbines, the EPA established standards of performance and argued these standards were achievable by the compliance date of January 1, 2032, considering the time necessary to deploy capture equipment, transport, and sequestration.

The EPA proposed to repeal the phase 2 CCS-based requirements for new base load combustion turbines based largely on a reassessment of the record underlying the determinations in the 2024 CPS. The EPA proposed that 90 percent CCS is not the BSER for new base load combustion turbines because it has not been adequately demonstrated and the costs are unreasonable. The EPA further proposed that the standards of performance are not achievable because it is unlikely that the infrastructure

²⁹² 42 FR 53782, 53783 (October 3, 1977).

²⁹³ 44 FR 52792 (September 10, 1979). As another example, the EPA promulgated standards for lime manufacturing plants for particulate matter, but not for NO_x, CO, or SO₂, due to their small amount of emissions or concerns about the available controls. See 42 FR 22056, 22507 (May 3, 1977); *Nat’l Lime Ass’n*, 627 F.2d at 426 & n.27.

²⁹⁴ 44 FR 49223 (August 21, 1979).

²⁹⁵ The EPA’s Information Collection Request analysis for the emission guidelines promulgated in the CPS indicates that developing state plans (and negative declarations) would entail a collective cost to the 48 States subject to the rule of approximately \$35 million over three years. See Document ID No. EPA-HQ-OAR-2023-0072-8836.

²⁹⁶ One commenter asserted that the presumptive standards of performance, which the EPA determined in the CPS, may not be appropriate given how oil and natural gas-fired steam

generating units may operate in the future. Comments of Talen Energy at 16–17, Document ID No. EPA-HQ-OAR-2025-0124-0904. Although the EPA is not repealing the emission guidelines for these sources on the basis of the achievability of the presumptive standards of performance, the Agency does note this concern.

(including capture equipment, pipelines for transport, and sequestration sites) for 90 percent CCS for new base load combustion turbines can be deployed by the January 1, 2032, compliance date.

The EPA is finalizing the determination that CCS with 90 percent capture is not the BSER for base load combustion turbine EGUs because it has not been adequately demonstrated and the costs are not reasonable. Furthermore, because it is unlikely that the infrastructure necessary for CCS can be deployed by the January 1, 2032, compliance date, the EPA is finalizing the determination that the associated standards of performance in the 2024 CPS for new base load combustion turbines are not achievable. Consequently, the EPA is finalizing repeal of the phase 2 standards for base load combustion turbine EGUs.

a. Adequately Demonstrated

For many of the same reasons described in section IV.A.1.a of this preamble for coal-fired steam generating units, CCS with 90 percent capture has not been adequately demonstrated for new combustion turbine EGUs. The 2024 CPS based the 90 percent capture BSER for new base load combustion turbines on the same capture technology as for coal-fired steam generating units.

i. Translation of Experience at Coal-Fired EGUs

The 2024 CPS relied on the translation of amine-based capture at coal-fired EGUs as evidence to support the determination that 90 percent capture on new natural gas-fired combustion turbine EGUs has been adequately demonstrated. However, as noted in section IV.A.1.a of this preamble, the determination for coal-fired EGUs in the 2024 CPS relied on an extrapolation that, on review, fails to show 90 percent capture is adequately demonstrated. Consequently, the EPA has re-assessed the evidence and is finalizing the determination that 90 percent capture and, therefore, 90 percent CCS have not been adequately demonstrated for existing coal-fired steam generating units. Therefore, the record for 90 percent capture on existing coal-fired steam generating units also does not show that 90 percent capture, or 90 percent CCS, is adequately demonstrated for new base load combustion turbine EGUs.

Additionally, the 2024 CPS argued that fewer contaminants (particulates, trace metals, sulfur dioxide (SO₂)) in the post-combustion flue gas of natural gas-fired stationary combustion turbines would result in fewer challenges with CO₂ capture than those experienced

with capture at coal-fired steam generating units. However, the exhaust gas composition for natural gas-fired combustion turbines is different in other ways than for coal-fired units (*i.e.*, lower CO₂ concentrations and higher oxygen concentrations), which makes CO₂ capture more challenging. Furthermore, combustion turbines can change loads more rapidly and start and stop more frequently than coal-fired steam generating units. These factors could create additional challenges for operating CO₂ capture equipment, and demonstrated capture rates from coal-fired EGUs do not necessarily demonstrate that base load combustion turbines could achieve the same capture rates. For example, the startup of the CO₂ capture system may be slower than the startup of a combined cycle combustion turbine EGU, so that the system would not capture CO₂ emitted during startup. This shows that directly applying the record for CO₂ capture at coal-fired EGUs to the evaluation of CO₂ capture as adequately demonstrated for natural gas-fired combustion turbine EGUs, without accounting for the differences between these types of units, is inappropriate.

ii. Capture Projects on Combustion Turbine EGUs

The examples of CO₂ capture applied directly on combustion turbine EGUs are also insufficient to conclude that 90 percent capture has been adequately demonstrated. Primarily, there have been limited examples of applications of CCS to combustion turbine EGUs, none of which have been at sufficient scale to demonstrate the specified BSER based on a 90 percent total capture efficiency.

In the 2024 CPS, the argument that 90 percent capture was adequately demonstrated at combustion turbine EGUs relied in part on the capture plant at the Bellingham combined cycle turbine.²⁹⁷ This capture plant was only 40 MWe, which is smaller than most base load combined cycle turbine EGUs that would have potentially been subject to the requirements of that rule, and processed only approximately 10 percent of the maximum flue gas volume. The project began operation in 1991 before shutting down in 2005 after the host combined cycle unit switched to peak shaving operation.²⁹⁸ Publicly available data for this project is limited,

so that the performance cannot be accurately assessed. The EPA otherwise cited pilot studies.²⁹⁹ However, such short-duration demonstrations may not be subject to the same variations in conditions that occur in commercial operation. Boundary Dam Unit 3 remains the only relevant commercial scale attempt at applying 90 percent CCS on a fossil fuel-fired power plant. Reasonable extrapolation from the experience at Boundary Dam Unit 3 shows that commercial scale deployments of CO₂ capture solvent technologies on post-combustion flue gas of fossil fuel-fired EGUs will underperform. Similar to coal-fired steam generating units, a capture system on a gas-fired combined cycle unit would achieve far less than 90 percent capture.³⁰⁰

The EPA also previously cited planned projects.³⁰¹ However, the planned projects are neither operational nor provide measured data. While the equipment for those planned projects may have been designed for 90 or even 95 percent CO₂ capture, simply designing a project for a certain percentage capture does not ensure that the project will achieve that percentage capture in practice. Boundary Dam Unit 3 did not achieve its design percentage capture, as detailed in section IV.A.1.a.i of this preamble. Therefore, because those hypothetical projects have not yet produced any data, they do not mitigate the potential underperformance of CO₂ capture, and, therefore, are not sufficient to show 90 percent CO₂ capture is adequately demonstrated. The EPA also noted the NET Power Cycle (*i.e.*, CO₂ capture based on oxy-combustion) as a potential technology for meeting the standard based on 90 percent capture. However, the technology provider has not operated the technology at scale and a planned project is facing delays.³⁰² More recently, the technology provider has deprioritized their efforts on oxy-combustion, and acknowledged it requires further development.³⁰³

²⁹⁹ 89 FR 39798, 39927 (May 9, 2024).

³⁰⁰ Using the same calculation detailed in section IV.A.1.a.i of this preamble, a system could achieve at best 63 to 82 percent capture.

³⁰¹ 89 FR 39798, 39927 (May 9, 2024).

³⁰² Net Power, Press Release: Net Power Reports Fourth Quarter 2024 Results and Provides Business Update (March 10, 2025). Available at: <https://ir.netpower.com/resources/press-releases/detail/37/net-power-reports-fourth-quarter-2024-results-and-provides-business-update>.

³⁰³ Net Power, Press Release: Net Power Reports Third Quarter 2025 Results and Provides Business Update (November 13, 2025). Available at: <https://ir.netpower.com/resources/press-releases/detail/44/net-power-reports-third-quarter-2025-results-and-provides-business-update>.

²⁹⁷ 89 FR 39925–26 (May 9, 2024).

²⁹⁸ Fluor, The U.S. Carbon Capture and Storage Market. Available at: <https://newsroom.fluor.com/featured-stories/blog-details/2025/The-U-S--Carbon-Capture-and-Storage-Market-Fluor-Role-45Qs-Influence-Challenges-for-New-and-Existing-Technologies-and-Which-Projects-Can-Succeed/default.aspx>.

Similarly, none of the other projects that the EPA cited have yet commenced construction, either on new NGCC units or on retrofits to existing plants.

Comments: Many commenters agreed with the EPA's proposed determination that 90 percent CCS is not adequately demonstrated for new base load natural gas-fired combustion turbines. Other commenters asserted that 90 percent capture is adequately demonstrated for those sources. Those commenters largely reiterated arguments made in the 2024 CPS, which the EPA has refuted in the preceding sections of this preamble. Those commenters also cited references to some new projects that were not in the record for the 2024 CPS and asserted those projects supported the conclusion that 90 percent CCS has been adequately demonstrated for new base load combustion turbine EGUs. One of the projects cited by commenters was the Ravenna CCS project in Italy, a small-scale capture project at a gas processing facility. Commenters argued this project supported the determination that 90 percent CCS was adequately demonstrated for new base load combustion turbines. Commenters similarly cite small-scale pilot projects, such as the pilot plant at the Himeji No. 2 gas-fired power plant in Japan (five metric tons per day), testing on NGCC flue gas at Los Medanos Energy Center (Contra Costa County, California) (1 MWe), and testing on NGCC flue gas at Technology Centre Mongstad (Mongstad, Norway) (10 MWe). In addition, some commenters cited other projects that are not operational, including the Net Zero Teeside Power project (United Kingdom).

EPA Response: The EPA disagrees with commenters' assertions as those projects are insufficient, for various reasons, to conclude that 90 percent CCS has been adequately demonstrated for base load natural gas-fired combustion turbine EGUs. The EPA finds the Ravenna project is insufficient to conclude 90 percent is adequately demonstrated. The project at Ravenna uses an amine solvent to capture CO₂ from the flue gas of a small 5 MW simple cycle combustion turbine, which drives a compressor for natural gas transmission. A heat recovery steam generator produces process steam and renewable generation provides electricity for the capture process. The combustion turbine is therefore not subject to the electricity and steam requirements of the capture process. This is distinct from the premise of the BSER in the 2024 CPS, where the EGU is a combined cycle unit and the capture system uses heat and power from the host EGU, such that changes in

operation of the host EGU may impact the capture facility. Moreover, the 2024 CPS applied to units greater than 25 MW, at least five times the size of the project at Ravenna. Considering those factors, the system at Ravenna has limited relevance to the capture system at issue in the 2024 CPS and this action. In addition, from startup in August 2024 through February 2025, the reported monthly average capture efficiency of the treated flue gas (when operating) was 91.8 percent with a peak of 96.1 percent. However, while reports claimed that the GHG emissions of the project were minimal, reports did not specify the amount of flue gas treated relative to the amount emitted from the facility and the amount of time the capture facility was operational. Lacking that information, it is impossible to evaluate the total capture efficiency and the performance of the project in practice. Because of the limited relevance of the Ravenna project to the capture system at issue here, and because of the incomplete information on the performance of the capture system, the EPA concludes that the experience at Ravenna is insufficient to conclude that 90 percent CCS is adequately demonstrated.

Furthermore, for the reasons detailed in section IV.A.1.a.i of this preamble, the EPA reasonably expects that a new capture system would underperform to a similar degree as Boundary Dam Unit 3. Such short term and small-scale projects cited by the commenters are insufficient to mitigate that potential underperformance, and therefore insufficient to show 90 percent capture is adequately demonstrated. Additionally, projects cited by the commenters that are not yet operational have not provided any data on capture performance and are therefore insufficient to that 90 percent capture is adequately demonstrated.

Considering these factors, the EPA is finalizing the determination that CCS with 90 percent capture has not been adequately demonstrated for new base load combustion turbine EGUs.

b. Cost

The EPA has re-evaluated the assumptions underlying the cost analysis of 90 percent CCS on new base load combustion turbines and is finalizing the determination that the costs are not reasonable.

i. Smaller Combustion Turbines

As part of the phase 1 BSER analysis for combustion turbines, the EPA reviewed the performance and costs of efficient generation for combustion turbines with base load ratings ranging

from 490 to 6,100 MMBtu/h. Based on the phase 1 BSER analysis, the EPA established higher emission standards for base load turbines with base load ratings of less than 2,000 MMBtu/h. However, when evaluating the phase 2 BSER based on the use of CCS, the EPA evaluated the reasonableness of the cost based only on combustion turbines with base load ratings of 4,600 and 6,100 MMBtu/h.³⁰⁴ The costs of the capture equipment and the costs to transport and store the captured CO₂ increase on a \$/ton basis for smaller base load combustion turbines. The costs of control on a \$/MWh and \$/ton basis for the smaller model combustion turbine facilities used in the phase 1 analysis are approximately double the highest costs that the EPA reported in the technical support document. Specifically, the estimated compliance costs for the primary case for the 490 and 1,000 MMBtu/h model combined cycle plants are \$73/MWh and \$200/ton and \$55/MWh and \$140/ton, respectively, which are significantly higher than the highest costs presented in the 2024 CPS—\$19/MWh and \$57/ton.³⁰⁵ Consequently, the EPA now finds that, in the 2024 CPS, the Agency did not establish that the cost of 90 percent CCS is reasonable for smaller base load combustion turbines.

ii. Operating/Availability, Capacity Factor, and Other Assumptions

Even without factoring in the previously cited omissions, the primary costs of 90 percent CCS for combustion turbines were a best-case scenario.³⁰⁶ As described in section IV.A.1 of this preamble, the EPA assumed in the 2024 CPS that capture equipment has 100 percent operating-availability. Reducing the operating-availability of the capture equipment to 75 percent reduces the CO₂ emission reductions and increases the cost by approximately \$2/MWh and \$18/ton compared to the estimated costs

³⁰⁴ The technical support document entitled *Greenhouse Gas Mitigation Measures Carbon Capture and Storage for Combustion Turbines* included estimated costs for combined cycle turbines with base load ratings of 2,400 and 3,400 MMBtu/h in figures 11 through 13. The costs for the primary case are \$29/MWh and \$95/ton and \$22/MWh and \$75/ton respectively—approximately 50 percent higher than the costs presented in the CPS. Document ID No. EPA-HQ-OAR-2023-0072-9099.

³⁰⁵ See memorandum entitled *Updated Evaluation of Best System of Emission Reduction Costs of Carbon Capture and Sequestration/Storage at New and Reconstructed Natural Gas-Fired Combustion Turbine Electric Generating Units* in the docket for this rulemaking (Document ID No. EPA-HQ-OAR-2025-0124).

³⁰⁶ The EPA discussed multiple advances that could lower the costs of a BSER based on the use of CCS, but currently none of these technologies are commercially available.

presented in the 2024 CPS.³⁰⁷ While CCS may achieve potential CO₂ emission reductions, these costs exceed the thresholds that the EPA cited as reasonable in previous Agency rulemakings.

In addition, when conducting the BSER analysis, the EPA assumed that the long-term capacity factors of new combined cycle turbines would be the same as historical long-term capacity factors with and without 90 percent CCS (51 percent capacity factor).³⁰⁸ In the primary policy case, the EPA compared the costs and emissions impacts assuming a new combined cycle turbine with CCS that operates at an 80 percent capacity factor for the first 12 years and a 31 percent capacity factor for the next 18 years.³⁰⁹ The EPA compared the leveled cost of electricity of this model facility to a combined cycle without CCS that operates at a 62 percent capacity factor for the first 12 years, a 47 percent capacity factor for the next 13 years, and a 37 percent capacity factor for the final five years.³¹⁰ However, the capacity factor assumptions in the 2024 CPS do not account for differences in incremental generating cost affecting dispatch. Based on cost information from NETL and EIA's Annual Energy Outlook, and assuming the full value of the IRC section 45Q tax credit, the incremental generating costs of combined cycle turbines with carbon capture are generally higher than those of nuclear EGUs but lower than those of coal-fired EGUs without carbon capture.³¹¹ While

the capacity factors of nuclear EGUs are higher (approximately 90 percent) than the 80 percent used by the EPA, the recent capacity factors of coal-fired EGUs are much lower (approximately 40 percent). While these provide an upper and lower bound of what capacity factors could be from a combined cycle turbine with CCS while the tax credit is available, the EPA selected the upper end of the range without conducting a dispatch analysis. Furthermore, even when counting the full value of the IRC section 45Q tax credit as a reduction, the estimated incremental generating costs of the 490 MMBtu/h combined cycle turbine with carbon capture are higher than the incremental generating costs of the model plant without CCS. Generally, combined cycle facilities without CCS that have recently commenced operation have not maintained capacity factors of 80 percent, this calls the capacity factor assumptions into question for smaller combined cycle facilities with CCS.³¹² Additionally, during periods when the IRC section 45Q tax credit is not available after the 12-year period of the credit has expired, it is unlikely that combined cycle turbines with carbon capture would operate at the 31 percent capacity factor used in the 2024 CPS costing analysis. The incremental generating costs of all the model combined cycle turbines with carbon capture exceed the incremental generating costs of simple cycle turbines. Simple cycle turbines generally operate at capacity factors of less than 10 percent. A dispatch modeling analysis would likely result in lower capacity factors and higher costs, which does not support the costs of 90 percent CCS as reasonable.

Further, the EPA only conducted the BSER analysis using capacity factors for the average combined cycle facility. The average combined cycle facility has a 30-year capacity factor of 51 percent. On average, new combined cycle facilities operate at a 65 percent capacity factor that steadily decreases to less than 40 percent by year 30. However, a combustion turbine that ever exceeds the base load threshold (40 percent in the 2024 CPS) for a single 12-operating

month period would, effectively, have to install 90 percent CCS to comply with the base load emissions standard. Therefore, while the EPA was correct in using the average capacity factor to determine if the costs of 90 percent CCS are reasonable, the maximum 12-calendar month capacity factor is the appropriate value for subcategorization purposes. A base load subcategorization threshold of 65 percent would subject the average combined cycle turbine to the CCS-based BSER. However, the EPA set a base load subcategorization capacity factor threshold of 40 percent. In doing this, the Agency subjects combustion turbines with lifetime capacity factors of less than 51 percent to a 90 percent CCS-based BSER. However, in the 2024 CPS, the EPA did not analyze whether 90 percent CCS qualifies as the BSER at lower capacity factors. For example, the 12-operating month capacity factor will vary over the life of the facility, even assuming a combined cycle facility operates at a relatively constant capacity over the entire 30-year life. If the absolute difference between the maximum 12-operating month and 30-year average capacity factors is five percent, the EPA should have determined whether CCS is the BSER for a combined cycle operating at a 30-year capacity factor of 35 percent. At a capacity factor of 35 percent, the costs of CCS are clearly not reasonable (\$36/MWh and \$110/ton), and costs are even higher for smaller units (\$56/MWh and \$170/ton).³¹³ In addition, if the EPA accounted for both the declining capacity factors as combustion turbines age and the 12-operating month variability, the 30-year capacity factor of a combined cycle turbine with a maximum 12-operating month capacity factor of 40 percent would be less than 35 percent, which calls into question whether the cost of 90 percent CCS at a 40 percent subcategorization threshold is reasonable since the costs are three times higher than the cost (\$18.5/MWh) the EPA previously determined to be reasonable.³¹⁴

When conducting the BSER analysis, the EPA failed to account for additional factors that would increase the costs of CCS. First, the Agency did not account for lost revenue due to lower capacity

³⁰⁷ See memorandum entitled *Updated Evaluation of Best System of Emission Reduction Costs of Carbon Capture and Sequestration/Storage at New and Reconstructed Natural Gas-Fired Combustion Turbine Electric Generating Units* in the docket for this rulemaking (Document ID No. EPA-HQ-OAR-2025-0124).

³⁰⁸ Based on data submitted to the Clean Air Markets Program, the median annual capacity factor of combined cycle turbines begins at a high of 68 percent and steadily declines to 34 percent in year 30. The median 30-year capacity factor is 51 percent. To avoid impacting the costs due to changes in the overall capacity factors with the base case, the EPA kept the overall 30-year capacity factor at the historical average of 51 percent.

³⁰⁹ The EPA selected 80 percent to account for the lower variable operating costs when the 45Q tax credits are available. The capacity factor during the final 18 years was adjusted to maintain a 30-year average capacity factor of 51 percent.

³¹⁰ The 62/47/37 operating scenario is based on the averaged reported median capacity factors for combined cycle turbines during the three periods of operation—62 percent during years 1 to 12, 47 percent during years 13 to 25, and 37 percent during years 26 to 30.

³¹¹ T. Schmitt, S. Leptinsky, M. Turner, A. Zoelle, M. Woods, T. Shultz, and R. James *Cost and Performance Baseline for Fossil Energy Plants Volume 1: Bituminous Coal and Natural Gas to Electricity, Revision 4a*, U.S. DOE. National Energy Technology Laboratory (NETL). (October 14, 2022). Available at: <https://netl.doe.gov/energy-analysis/>

details?id=e818549c-a565-4cbc-94db-442a1c2a70a9; Capital Cost and Performance Characteristics for Utility-Scale Electric Power Generating Technologies. U.S. DOE. U.S. Energy Information Administration (EIA). (January 2024). Available at: https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capital_cost_AEO2025.pdf.

³¹² Based on information submitted to the EPA's Clean Air Markets Program Data, the 2025 average annual capacity factor of combined cycle turbines that commenced operation between 2020 and 2024 is 65 percent.

³¹³ The costs for the combustion turbine model plant with a 6,100 MMBtu/h base load rating is \$36/MWh (\$110/ton) at a 35 percent capacity factor. The costs for the combustion turbine model plant with a 2,400 MMBtu/h base load rating is \$56/MWh (\$170/ton) at a 35 percent capacity factor.

³¹⁴ Assuming an initial capacity factor of 40 percent that declines to 22 percent at year 30 results in an overall capacity factor of 30 percent. Costs are similar to the constant 35 percent capacity factor case.

payments that result from the lower net output of combined cycle facilities with CCS relative to combined cycle facilities without CCS.³¹⁵ Assuming a capacity payment of \$65/kW, a 1x1 F-class combined cycle facility would lose almost \$3 million per year in capacity payments, and a 1x1 H-class combined cycle facility would lose almost \$4 million per year in capacity payments.³¹⁶

iii. The IRC Section 45Q Tax Credit

As noted above in connection with the costs of CCS for existing coal-fired plants, the 2024 CPS accounted for the IRC section 45Q tax credits by reducing the direct costs to the source for every ton of CO₂ captured. However, the EPA no longer believes that counting the IRC section 45Q tax credit as a reduction in determining BSER is appropriate, as discussed in section IV.A.1.b of this preamble. Rather, the tax credit shifts the costs of CCS to taxpayers, and in the 2024 CPS, the EPA failed to account for those costs. Removing the tax credit as a reduction in the costs for the 2024 CPS 90 percent CCS case increases the costs for combustion turbines with base load ratings of 4,600 and 6,100 MMBtu/h to \$37/MWh (\$110/ton) and \$32/MWh (\$100/ton), respectively. Even using the 2024 CPS primary model plants, the costs of 90 percent CCS for base load stationary combustion turbines are clearly unreasonable.³¹⁷

c. Infrastructure

Consistent with the arguments presented in section IV.A.1.c of this preamble regarding CCS infrastructure for existing coal-fired steam generating units, the necessary infrastructure to meet the requirements for the phase 2 CCS-based requirements for base load combustion turbines cannot likely be deployed by the January 1, 2032,

compliance date. While new combustion turbines do not have the additional timeline requirement of state plan development, the timeline in the 2024 CPS for the design, permitting, and installation of capture equipment, pipelines, and sequestration for new combustion turbines assumes an unrealistic best-case scenario.

Furthermore, pipeline and sequestration infrastructure remain limited. In the 2024 CPS, the EPA argued that new combustion turbines could site preferentially near potential storage sites. However, the EPA did not consider the availability of sufficient quantities of natural gas or the availability of sufficient transmission capacity (*i.e.*, to transmit power to end users) for new base load combustion turbines specifically located near potential storage sites.³¹⁸ In addition, the analysis ignores the associated line loss (*i.e.*, inefficiency) due to potentially longer transmission lines.³¹⁹ The analysis further ignores the requirements of siting electricity generating sources in locations necessary to meet local grid reliability considerations. Considering these factors, it is unlikely that the infrastructure necessary for CCS can be deployed by the January 1, 2032, compliance date, and the EPA has therefore determined that phase 2 standards of performance in the 2024 CPS for new base load combustion turbines are not achievable.

Additionally, similar to coal-fired steam generating units, much of the necessary CCS infrastructure would likely be developed by external parties over whom the owners and operators of regulated facilities have limited control. This complicates deployment and has the potential to cause or exacerbate delays, providing further support for the conclusion that the January 1, 2032, compliance date and the degree of emission limitation are unachievable.

d. Conclusion

The EPA is finalizing the determination that 90 percent CCS has

not been adequately demonstrated nor shown to have reasonable costs and thus is not the BSER for base load stationary combustion turbines. Furthermore, because it is unlikely that the infrastructure necessary for CCS can be deployed by the January 1, 2032, compliance date, the EPA is finalizing the determination that the phase 2 standards of performance in the 2024 CPS for new base load combustion turbines are not achievable.

Accordingly, the Agency is finalizing repeal of the phase 2 requirements for base load combustion turbines.

e. Implications for Evaluation of Best Available Control Technology (BACT) for Prevention of Significant Deterioration (PSD) Permitting

Sources subject to 40 CFR part 60, subparts NSPS TTTT and NSPS TTTTa may be subject to a component of the major NSR program known as the PSD program.

Part C of title I of the CAA contains the requirements for the PSD program. This program sets forth procedures for the preconstruction review and permitting of new and modified stationary sources of air pollution locating in areas meeting the NAAQS (“attainment” areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment (“unclassifiable” areas). Sources subject to PSD must, among other requirements, demonstrate that construction or modification will not cause or contribute to a violation of any NAAQS or PSD increment,³²⁰ and comply with the emission limitations that reflect the BACT “for each pollutant subject to regulations” under the CAA.³²¹ The EPA regulations for the PSD program are contained in 40 CFR 51.166 (applicable to air agencies that issue permits under EPA-approved SIPs) and 40 CFR 52.21 (the federal PSD program applicable to permits issued by the EPA or air agencies to which the EPA has delegated authority to implement the federal PSD program). Most PSD permits are issued by State and local air agencies, subject to federally enforceable rules in State Implementation Plans. There are a smaller number of programs where State, local, or Tribal permitting authorities have delegated federal authority to issue permits on behalf of the EPA or where the EPA directly issues PSD permits.

Revisions to the emissions standards in this rulemaking pursuant to CAA

³¹⁵ The capacity markets pay owners of generating units based on the ability to provide firm power regardless of if any electricity is actually delivered to the electric grid.

³¹⁶ The EPA notes that when the Agency finalized subpart TTTTa, only the most efficient combustion turbines with base load ratings of greater than 850 MMBtu/h would have required the installation of a selective catalytic reduction (SCR) to comply with the criteria pollutant NSPS (subpart KKKK). Less efficient simple cycle turbines could comply with the criteria pollutant NSPS using advanced combustion controls. Since subpart TTTTa is based on the use of the most efficient combustion turbines, the EPA should have accounted for the costs of SCR as part of the BSER evaluation. While the new criteria pollutant NSPS (subpart KKKKa) does not require the use of SCR for any non-base load combustion turbines as a procedural matter, the EPA should have addressed the issue in the final subpart TTTTa rulemaking.

³¹⁷ The costs for the 1x1 F-class and 1x1 H-class are \$47/MWh (\$140/ton) and \$39/MWh (\$120/ton) respectively.

³¹⁸ If a storage site does not have enough available natural gas to fuel a new base load combustion turbine, or enough transmission capacity to deliver the generated electricity to end users, infrastructure would have to be developed prior to the new combustion turbine commencing operation. Developing that infrastructure could result in additional costs to the owner or operator of the new base load combustion turbine.

³¹⁹ Although transmission lines conduct electricity, they have some resistance that results in dissipation of the electrical energy in other forms (*e.g.*, heat). As a result, when transmitted over long distances, the electric energy delivered to an end user is less than the electric energy produced at the generating source (in this case, a stationary combustion turbine).

³²⁰ CAA section 165(a)(3), 42 U.S.C. 7475(a)(3).

³²¹ CAA sections 165(a)(4) and 169(3), 42 U.S.C. 7475(a)(4), 7479(3).

section 111 will impact the minimum requirements of BACT in the PSD program. The BACT requirement is the maximum degree of emission reduction a specific source can achieve on a case-by-case basis considering the energy, environmental, and economic impacts of available control measures. The definition of “best available control technology” in CAA section 169(3) states that, “In no event shall application of ‘best available control technology’ result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 [CAA section 111] or 7412 [CAA section 112] of this title.”³²² In other words, the CAA specifies that BACT cannot be set at an emission control level that is less stringent than that which any applicable standard of performance under the NSPS requires. An applicable NSPS must always be met and provides a “floor” for the BACT requirement; however, a BACT determination could be more stringent than the NSPS. As such, the GHG emission limits the EPA is repealing in this NSPS rulemaking, including the standards for new base load combustion turbines based on 90 percent CCS, will no longer be the “BACT floor” for GHG emissions from sources in the applicable category. The EPA acknowledges that sources and air agencies have some flexibility in implementation of BACT and may continue to consider certain limits and/or controls that are more stringent than the BACT floor. The EPA acknowledges that changing applicable standards under the NSPS can result in implementation impacts in the context of PSD and BACT. The EPA provides additional discussion in chapter 5.3 of the RTC on implications to BACT for PSD permitting related to the 2024 efficiency-based standards in 40 CFR part 60, subpart TTTTa.

2. Summary of Substantial Comments on the 2024 Efficiency-Based Requirements for New Intermediate and Base Load Combustion Turbines

In the June 2025 NPRM, the EPA broadly solicited comment on the BSER determinations and standards of performance for all new and reconstructed combustion turbines. While the EPA is not finalizing changes to the requirements for new or reconstructed combustion turbines other than removing the phase 2 CCS-based requirements for new base load combustion turbines as discussed in

section IV.C.1 of this preamble, the Agency notes that commenters specifically raised several concerns on the achievability of the 2024 efficiency-based standards for new intermediate load and base load combustion turbines. Those comments are summarized in this section of the preamble. Additional comments are summarized in the RTC.

Comments: Several commenters raised concerns over the achievability of the efficiency-based standards for new combustion turbines. Commenters cited issues including the need to account for variability in operating load and ambient conditions affecting performance and that many combustion turbine models that could be intermediate load or base load would be unable to meet the standards. Commenters also raised concerns about the limited availability of combustion turbines that could meet the standards, particularly considering load growth. Commenters also stated that efficiency can degrade over time due to normal wear. Commenters also cited uncertainty in how turbines will operate in the future.

Response: The EPA acknowledges the commenters’ concerns regarding the 2024 efficiency-based standards for new combustion turbine EGUs. While the EPA is not repealing or otherwise revising the 2024 efficiency-based standards in this action, the Agency notes that it is simultaneously issuing a supplemental proposal soliciting additional public comment on the underlying question raised in the primary basis of the June 2025 NPRM: Whether the EPA lacks statutory authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. That action, if finalized as proposed, would repeal all GHG standards for the fossil fuel-fired EGU source category, including the 2015 and 2024 GHG standards, and would thus resolve commenters’ concerns.

3. Conclusion

Based on the EPA’s review of the BSER and the achievability of the standards, and for the reasons detailed in this section of the preamble, the EPA is repealing the 2024 phase 2 CCS-based emission standards finalized in the 2024 CPS for new base load stationary combustion turbines, codified in 40 CFR part 60, subpart TTTTa.

D. Consideration of Alternatives

The EPA is determining that it is not necessary to analyze and promulgate alternatives to the repeal of the emission guidelines and standards of performance in this action. The purpose

of this rule is to provide near-term relief from the 2024 CPS requirements that the EPA now considers unlawful, infeasible, or otherwise unreasonable. This action is not intended to establish replacement standards. Although CAA section 111 generally requires the EPA to regulate existing sources once the EPA has set standards for new sources, the statute does not require the Agency to do so within a particular timeframe. For that reason, the EPA is not legally obligated to promulgate replacement standards in this rulemaking. Nor is it appropriate to do so, for the following reasons:

First, the EPA’s approach in this rulemaking is consistent with the incremental way agencies often proceed, and courts have recognized that agencies may act in steps rather than all at once.³²³ The EPA’s decision not to immediately move forward with alternatives is also supported by its simultaneous proposal to find that it lacks authority under CAA section 111 to regulate GHG emissions from fossil fuel-fired power plants. If that proposal is finalized, any replacement BSER determinations, standards of performance, or compliance schedules would become unnecessary. Thus, promulgating alternatives now could prove to be futile and wasteful. If the EPA does not finalize that separate proposal, the Agency could revisit whether alternatives to the standards repealed in this action should be developed and promulgated. For now, however, the EPA believes it is reasonable to proceed without doing so.

The EPA also notes that it already considered and rejected several alternatives in the 2024 CPS. For long-term coal-fired steam generating units, the EPA evaluated 90 percent CCS, partial CCS at lower capture rates, natural gas co-firing, and heat-rate improvements. The EPA rejected partial CCS because it would produce substantially smaller reductions at higher cost, and because it considered 90 percent CCS achievable. In addition, the IRC section 45Q tax credit might not be available to offset partial CCS costs. In this final rule, the EPA now rejects the conclusion that 90 percent CCS is adequately demonstrated and achievable, and it further concludes that the IRC section 45Q tax credit should not be counted in evaluating the BSER costs of CCS. As a result, the EPA believes partial CCS would be even more expensive than previously thought. The EPA likewise determined

³²² See also 40 CFR 51.166(b)(12), 52.21(b)(12) (defining BACT).

³²³ *Fox Television Stations*, 556 U.S. at 522; see also *Pub. Safety Spectrum All.*, *supra* (it was reasonable for the FCC to defer making relevant decisions to a subsequent action).

that natural gas co-firing would amount to impermissible generation shifting and therefore cannot serve as BSER. Heat-rate improvements were also rejected because they would provide only limited reductions and could create a rebound effect.

For medium-term coal-fired EGUs, the EPA similarly considered and rejected CCS and heat-rate improvements in the 2024 CPS. That prior analysis reinforces the EPA’s conclusion that further consideration of alternatives is unnecessary here. For new baseload combustion turbines, the EPA considered lower-emitting fuels, highly efficient generation, and hydrogen co-firing. The EPA has not changed its prior conclusion that highly efficient generation remains an appropriate BSER for those units. The Agency previously found that lower-emitting fuels would reduce emissions only modestly and that uncertainties about the cost of low-GHG hydrogen prevented the EPA from

treating hydrogen as part of the BSER at that time. Taken together, these prior evaluations support the EPA’s view that additional alternatives to the repealed standards do not need to be analyzed and promulgated in this rulemaking.

V. Statutory and E.O. Reviews

Additional information about these statutes and E.O.s can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. E.O. 12866: Regulatory Planning and Review and E.O. 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action under E.O. 12866 section 3(f)(1) that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in the course of E.O. 12866 review have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this

action. This analysis, *Regulatory Impact Analysis for the Final Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units*, is available in the docket.

The EPA presents the estimated present value (PV) and equivalent annualized value (EAV) of the projected cost savings for the power sector of this final repeal for the years 2026 to 2047 in 2024 dollars, discounted to 2025. In addition, the EPA presents the results for specific snapshot years, consistent with historical practice. These snapshot years are 2030, 2035, 2040, and 2045. The benefit-cost analysis, which is in the RIA for this rulemaking, is available in the docket.

The analysis considers the power industry’s compliance costs as the change in electric power generation costs due to this final repeal. Table 1 presents the estimates of compliance cost savings of this final rule for the power sector.

TABLE 1—PRESENT VALUE (PV) AND EQUIVALENT ANNUALIZED VALUE (EAV) OF THE COMPLIANCE COST SAVINGS
(Billion 2024\$, discounted to 2025)

3% Discount rate		7% Discount rate	
PV	EAV	PV	EAV
160	10	95	8.6

Note: For the reasons the EPA describes in section 4 of the RIA, the Agency has not monetized several impact categories, including the potential health and welfare impacts of changes in emissions. Therefore, this table does not include those impact categories.

The compliance cost savings in Table 1 are the estimated change in expenditures by the power sector due to this final repeal, which include changes in taxes paid and credits received. The analysis also considers the real resource cost savings due to this final repeal, which are the change in the total avoided cost of resources used by the power sector, which includes capital, labor, fuel, and material inputs, that would have been used for compliance. In contrast to the compliance cost savings in Table 1, the real resource cost savings do not include transfers, such as taxes paid or tax credits, that shift who is paying for the inputs for compliance but do not reduce the social cost. The use of tax credits would have reduced costs from the perspective of firms in the power sector but would have led to a use of resources that are a cost from a societal perspective. These societal costs will now be avoided because of this final action. Over the 2026 to 2047 period, the PV of the estimated real resource cost savings is \$280 billion using a three percent discount rate and \$180 billion using a seven percent discount rate discounted to 2025. Over this same timeframe, the EAV of the

estimated real resource cost is \$18 billion using a three percent discount rate, and \$16 billion using a seven percent discount rate.

Changes in resources used by the power sector may cause economic interactions in other markets that affect other sectors and households. To evaluate the economy-wide social costs and economic impacts of the action, the EPA used the peer-reviewed CGE model SAGE. The PV of the social cost savings estimated in SAGE for the action is approximately \$310 billion (2024 dollars) between 2026 and 2047 (discounted to 2025). The EAV is \$23 billion. Note that SAGE does not account for the effects of changing environmental quality as a result of this action. The RIA further describes the methodology and the distinctions between compliance costs, real resource costs, and social costs.

The EPA is obligated to present the agency’s best scientific understanding and the implications of that science when developing policies and regulations. However, historically, the EPA’s analytical practices may not have presented the full range of uncertainties and associated confidence level

regarding the potential benefit estimates from reduction in exposure to particulate matter (PM_{2.5}) and ozone. In addition, the science regarding the exposure, health effects from exposure and valuation of reduction in health effect are evolving with better data and methods, especially at low concentrations of PM and ozone. Some of the sources of uncertainties include the set of assumptions used in projecting the health impact of reducing PM. These projections are based on a series of models that take into account emissions changes, resulting distributions of changes in ambient air quality, the estimated reductions in health effects from changes in exposure, and the composition of the population that will benefit from the reduced exposure. Each component includes assumptions, each with varying degrees of uncertainty.

In addition, the EPA historically provided point estimates rather than just ranges of emission-related effects or only quantifying emissions when monetizing proved to be too uncertain. Therefore, to address these concerns, the EPA is refraining from providing primary estimates resulting from

changes in PM_{2.5} and ozone exposure resulting from changes in direct PM_{2.5}, NO_x and VOC emissions but will continue to quantify the emissions until the Agency is confident enough in the modeling to robustly monetize those impacts.

To illustrate the impacts of the final repeal, including the cost savings of not deploying CCS as a control strategy and the resultant impact on real resource costs through diminished uptake of the IRC section 45Q tax credit, the EPA assumes that 90 percent CCS is allowed in the model's solution set in the modelling supporting the current RIA. However, to illustrate the sensitivity of the results to the viability of 90 percent CCS as a control strategy, the EPA also developed a modeling scenario assuming 90 percent CCS is not allowed in the model's solution set. These model runs and a memorandum describing key results are available in the docket for this action.³²⁴

B. E.O. 14192: Unleashing Prosperity Through Deregulation

This action is considered an E.O. 14192 deregulatory action. For regulatory accounting purposes, the estimated present value and annualized value of the cost savings of this rule are \$102 billion and \$7 billion, respectively (7 percent discount rate, 2024 dollars, 2024 present value year, perpetuity time horizon). Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the potential costs and benefits associated with this action. This analysis, *Regulatory Impact Analysis for the Final Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units*, is available in the docket.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final action have been submitted for approval to the OMB under the PRA. The EPA is finalizing amendments to the information collection request (ICR) for 40 CFR part 60, subpart UUUUb. Details on the amendments for this subpart are described below. The EPA is not finalizing amendments to the ICRs for 40 CFR part 60, subparts TTTT and TTTTa.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves the ICR, the Agency will

announce that approval in the FR 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.

1. 40 CFR Part 60, Subpart TTTT

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0685.

2. 40 CFR Part 60, Subpart TTTTa

This action does not impose any new information collection burden under the PRA.

3. 40 CFR Part 60, Subpart UUUUb

The ICR document that the EPA prepared has been assigned EPA ICR number 2770.04. 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 repeals requirements on state governments with existing fossil fuel-fired steam generating units. The information collection requirements are based on the recordkeeping and reporting burden reduction associated with developing, implementing, and enforcing a state plan to limit GHG emissions from these existing EGUs.

Respondents/affected entities: States with one or more designated facilities covered under subpart UUUUb.

Respondent's obligation to respond: No longer mandatory.

Estimated number of respondents: 43.
Frequency of response: No response required.

Total estimated burden reduction: 89,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost savings: \$11.7 million, includes \$35,000 annualized capital or operation & maintenance costs.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this final rule will not have a significant economic impact on a substantial number of small entities because this action relieves regulatory burden on the small entities subject to

the rule. Emission guidelines established under CAA section 111(d) do not impose any requirements on regulated entities and, thus, will not have a significant economic impact upon a substantial number of small entities. After emission guidelines are promulgated, States establish emission standards on existing sources, and it is those requirements that could potentially impact small entities. Thus, the repeal of the requirements in the emission guidelines will not impose any requirements on small entities. The repeal of requirements for new, modified, and reconstructed fossil fuel-fired EGUs will relieve regulatory burden on the small entities subject to the rule. As outlined in section 5.3 of the RIA for this rulemaking, the EPA identified 14 potentially affected small entities that own NGCC units considered in the analysis. Under the repeal, the EPA projected compliance cost savings of \$143 million for these small entities in 2035. Consequently, the EPA expects that this deregulatory action will relieve the regulatory burden for facilities that, absent this repeal, would be affected by the provisions from the 2024 CPS. As a result, this action will not have a significant economic impact on a substantial number of small entities under the RFA. 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 of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

F. E.O. 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. E.O. 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in E.O. 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on

³²⁴ See memorandum entitled "IPM Sensitivity Runs Memo" in the docket for this rulemaking.

the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in E.O. 13175. Thus, E.O. 13175 does not apply to this final action.

However, because of Tribal interest on this action and consistent with the EPA Policy on Consultation with Indian Tribes, the EPA offered government-to-government consultation with Tribes. Tribal consultations were completed following the proposal at the request of the Summit Lake Paiute Tribe, the Coeur d'Alene Tribe, the Bois Forte Tribe, and the Ak-Chin Indian Community. Summaries of these consultations are included in the rulemaking docket.

H. E.O. 13045: Protection of Children From Environmental Health Risks and Safety Risks

E.O. 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 subject to E.O. 13045 because it is a significant regulatory action under section 3(f)(1) of E.O. 12866. The 2024 CPS was anticipated to reduce emissions of various pollutants and some of the benefits of reducing these pollutants would have accrued to children. This final action is expected to decrease the impact of the emissions reductions estimated from the 2024 CPS on these benefits. However, as discussed in the RIA, the EPA does not quantify the health effects of air pollution in this final rule.

This final action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other mechanisms in the CAA. This final action does not affect applicable local, State, or Federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

I. E.O. 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy over the analysis period (2026–2047)

based on the results presented in the RIA accompanying this rulemaking.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking does not involve technical standards; however, with the removal of 40 CFR part 60 subpart UUUUb, the EPA is also removing ANSI No. C12.20–2010 from § 60.5860b that has been approved for incorporation by reference.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit the rule report to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Lee Zeldin,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 60 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

- 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

- 2. Amend § 60.17 by revising paragraph (d)(1) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(d) * * *

(1) ANSI No. C12.20–2010 American National Standard for Electricity Meters—0.2 and 0.5 Accuracy Classes (Approved August 31, 2010); IBR approved for §§ 60.5535(d); 60.5535a(d).

* * * * *

Subpart TTTT—Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units

- 3. Revise § 60.5508 to read as follows:

§ 60.5508 What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for

the control of greenhouse gas (GHG) emissions from a steam generating unit or an integrated gasification combined cycle (IGCC) facility that commences construction after January 8, 2014, commences reconstruction after June 18, 2014, or commences modification after January 8, 2014. This subpart also establishes emission standards and compliance schedules for the control of GHG emissions from a stationary combustion turbine that commences construction after January 8, 2014, but on or before May 23, 2023, or commences reconstruction after June 18, 2014, but on or before May 23, 2023. An affected steam generating unit, IGCC, or stationary combustion turbine shall, for the purposes of this subpart, be referred to as an affected electric generating unit (EGU).

- 4. Amend § 60.5580 by revising the definition of *System emergency* to read as follows:

§ 60.5580 What definitions apply to this subpart?

* * * * *

System emergency means periods when the Reliability Coordinator has declared an Energy Emergency Alert level 2 or 3 which should follow NERC Reliability Standard EOP–011–2, its successor, or equivalent.

* * * * *

Subpart TTTTa—Standards of Performance for Greenhouse Gas Emissions for New Construction and Reconstruction Stationary Combustion Turbine Electric Generating Units

- 5. Revise the heading of subpart TTTTa to read as set forth above.

- 6. Revise § 60.5508a to read as follows:

§ 60.5508a What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for the control of GHG emissions from a stationary combustion turbine that commences construction or reconstruction after May 23, 2023. An affected stationary combustion turbine shall, for the purposes of this subpart, be referred to as an affected electric generating unit (EGU).

- 7. Amend § 60.5509a by:
- a. Revising the introductory text of paragraph (a);
- b. Removing and reserving paragraph (b)(1);
- c. Revising paragraph (b)(4); and
- d. Removing and reserving paragraph (b)(7).

The revisions read as follows:

§ 60.5509a Am I subject to this subpart?

(a) Except as provided for in paragraph (b) of this section, the GHG standards included in this subpart apply to any stationary combustion turbine that commences construction or reconstruction after May 23, 2023, that meets the relevant applicability conditions in paragraphs (a)(1) and (2) of this section.

* * * * *

(b) * * *

(4) Your EGU serves a generator along with other stationary combustion

turbine(s) where the effective generation capacity (determined based on a prorated output of the base load rating of each stationary combustion turbine) is 25 MW or less.

* * * * *

■ 8. Amend § 60.5525a by revising paragraphs (a)(3) and (c)(2) and (3) to read as follows:

§ 60.5525a What are my general requirements for complying with this subpart?

* * * * *

(a) * * *

(3) Owners/operators of a base load combustion turbine with a base load rating of less than 2,110 GJ/h (2,000 MMBtu/h) and/or an intermediate or base load combustion turbine burning fuels other than natural gas may elect to determine a site-specific emissions rate using one of the following equations. Combustion turbines firing fuels with a lower CO₂ emissions rate than natural gas (e.g., hydrogen) are not required to use the fuel adjustment parameter.

(i) For base load combustion turbines: Equation 2 to Paragraph (a)(3)(i)

$$\text{CO}_2 \text{ emissions standard} = \left[\text{BLER}_L + \frac{\text{BLER}_S - \text{BLER}_L}{\text{BLR}_L - \text{BLR}_S} \times (\text{BLR}_L - \text{BLR}_A) \right] \times \left[\frac{\text{HIER}_A}{\text{HIER}_{\text{NG}}} \right] \text{ (Eq. 2)}$$

Where:

CO₂ emission standard = the emission standard during the compliance period in units of kg/MWh (or lb/MWh).

BLER_L = Base load emissions standard for natural gas-fired combustion turbines with base load ratings greater than 2,110 GJ/h (2,000 MMBtu/h). 360 kg CO₂/MWh-gross (800 lb CO₂/MWh-gross) or 370 kg CO₂/MWh-net (820 lb CO₂/MWh-net).

BLER_S = Base load emissions standard for natural gas-fired combustion turbines

with a base load rating of 260 GJ/h (250 MMBtu/h). 410 kg CO₂/MWh-gross (900 lb CO₂/MWh-gross) or 420 kg CO₂/MWh-net (920 lb CO₂/MWh-net).

BLR_L = Minimum base load rating of large combustion turbines 2,110 GJ/h (2,000 MMBtu/h).

BLR_S = Base load rating of smallest combustion turbine 260 GJ/h (250 MMBtu/h).

BLR_A = Base load rating of the actual combustion turbine in GJ/h (or MMBtu/h).

HIER_A = Heat input-based emissions rate of the actual fuel burned in the combustion turbine (lb CO₂/MMBtu). Not to exceed 69 kg/GJ (160 lb CO₂/MMBtu).

HIER_{NG} = Heat input-based emissions rate of natural gas 50 kg/GJ (120 lb CO₂/MMBtu).

(ii) For intermediate load combustion turbines:

Equation 3 to Paragraph (a)(3)(ii)

$$\text{CO}_2 \text{ emissions standard} = \text{ILER} \times \left[\frac{\text{HIER}_A}{\text{HIER}_{\text{NG}}} \right] \text{ (Eq. 3)}$$

Where:

CO₂ emission standard = the emission standard during the compliance period in units of kg/MWh (or lb/MWh).

ILER = Intermediate load emissions rate for natural gas-fired combustion turbines. 530 kg/MWh-gross (1,170 lb CO₂/MWh-gross) or 540 kg CO₂/MWh-net (1,190 lb CO₂/MWh-net).

HIER_A = Heat input-based emissions rate of the actual fuel burned in the combustion turbine (lb CO₂/MMBtu). Not to exceed 69 kg/GJ (160 lb CO₂/MMBtu).

HIER_{NG} = Heat input-based emissions rate of natural gas 50 kg/GJ (120 lb CO₂/MMBtu).

* * * * *

(c) * * *

(2) For a reconstructed EGU that becomes subject to this subpart, the first month of the initial compliance period shall be the first operating month (as defined in § 60.5580a) after the calendar month in which emissions reporting is required to begin under § 60.5555a(c)(3)(iii).

(3) Emissions of CO₂ emitted by your affected facility and the output of the affected facility generated when it operated during a system emergency as defined in § 60.5580a are excluded for

both applicability and compliance with the relevant standards of performance if you can sufficiently provide the documentation listed in § 60.5560a(i). The relevant standard of performance for affected EGUs that operate during a system emergency depends on the subcategory, as described in paragraph (c)(3)(i) of this section.

(i) For intermediate and base load combustion turbines that operate during a system emergency, you must comply with the standard for low load combustion turbines specified in table 1 to this subpart.

(ii) [Reserved]

■ 9. Amend § 60.5535a by revising paragraphs (b)(1) and (g) to read as follows:

§ 60.5535a How do I monitor and collect data to demonstrate compliance?

* * * * *

(b) * * *

(1) For affected EGUs, you may install, certify, operate, maintain, and calibrate a CO₂ continuous emission monitoring system (CEMS) to directly measure and record hourly average CO₂ concentrations in the affected EGU

exhaust gases emitted to the atmosphere, and a flow monitoring system to measure hourly average stack gas flow rates, according to 40 CFR 75.10(a)(3)(i). As an alternative to direct measurement of CO₂ concentration, provided that your EGU does not use carbon separation (e.g., carbon capture and storage), you may use data from a certified oxygen (O₂) monitor to calculate hourly average CO₂ concentrations, in accordance with 40 CFR 75.10(a)(3)(iii). If you measure CO₂ concentration on a dry basis, you must also install, certify, operate, maintain, and calibrate a continuous moisture monitoring system, according to 40 CFR 75.11(b). Alternatively, you may either use an appropriate fuel-specific default moisture value from 40 CFR 75.11(b) or submit a petition to the Administrator under 40 CFR 75.66 for a site-specific default moisture value.

* * * * *

(g) In accordance with §§ 60.13(g) and 60.5520a if the exhaust gases from an affected EGU that implements the continuous emission monitoring provisions in paragraph (b) of this

section are emitted to the atmosphere through multiple stacks (or if the exhaust gases are routed to a common stack through multiple ducts and you elect to monitor in the ducts), you must monitor the hourly CO₂ mass emissions and the “stack operating time” (as defined in 40 CFR 72.2) at each stack or duct separately. In this case, you must determine compliance with the applicable emissions standard in table 1 to this subpart by summing the CO₂ mass emissions measured at the

individual stacks or ducts and dividing by the total gross or net energy output for the affected EGU.

- 10. Amend § 60.5540a by:
 - a. Revising paragraphs (a)(5)(i) and (a)(8); and
 - b. Removing paragraph (c).

The revisions read as follows:

§ 60.5540a How do I demonstrate compliance with my CO₂ emissions standard and determine excess emissions?

(a) * * *

(5) * * *

(i) Calculate $P_{gross/net}$ for your affected EGU using the following equation. All terms in the equation must be expressed in units of MWh. To convert each hourly gross or net energy output (consistent with § 60.5520a) value reported under part 75 of this chapter to MWh, multiply by the corresponding EGU or stack operating time.

Equation 1 to Paragraph (a)(5)(i)

$$P_{gross/net} = \frac{(Pe)_{ST} + (Pe)_{CT} + (Pe)_{IE} - (Pe)_A}{TDF} + [(Pt)_{PS} + (Pt)_{HR} + (Pt)_{IE}] \text{ (Eq. 1)}$$

Where:

$P_{gross/net}$ = In accordance with § 60.5520a, gross or net energy output of your affected EGU for each valid operating hour (as defined in paragraph (a)(1) of this section) in MWh.

(Pe)_{ST} = Electric energy output plus mechanical energy output (if any) of steam turbines in MWh.

(Pe)_{CT} = Electric energy output plus mechanical energy output (if any) of stationary combustion turbine(s) in MWh.

(Pe)_{IE} = Electric energy output plus mechanical energy output (if any) of your affected EGU's integrated equipment that provides electricity or mechanical energy to the affected EGU or auxiliary equipment in MWh.

(Pe)_A = Electric energy used for any auxiliary loads in MWh. Not applicable for determining P_{gross} .

(Pt)_{PS} = Useful thermal output of steam (measured relative to standard ambient temperature and pressure (SATP) conditions, as applicable) that is used for applications that do not generate additional electricity, produce mechanical energy output, or enhance the performance of the affected EGU. This is calculated using the equation specified in paragraph (a)(5)(ii) of this section in MWh.

(Pt)_{HR} = Non steam useful thermal output (measured relative to SATP conditions, as applicable) from heat recovery that is used for applications other than steam generation or performance enhancement of the affected EGU in MWh.

(Pt)_{IE} = Useful thermal output (relative to SATP conditions, as applicable) from any integrated equipment is used for applications that do not generate additional steam, electricity, produce mechanical energy output, or enhance the performance of the affected EGU in MWh.

TDF = Electric Transmission and Distribution Factor of 0.95 for a combined heat and power affected EGU where at least on an annual basis 20.0 percent of the total gross or net energy output consists of useful thermal output on a 12-operating-

month rolling average basis, or 1.0 for all other affected EGUs.

* * * * *

(8) You may exclude CO₂ mass emissions and output generated from your affected EGU from your calculations for hours during which the affected EGU operated during a system emergency, as defined in § 60.5580a, if you can provide the information listed in § 60.5560a(i). While operating during a system emergency, your compliance determination depends on your subcategory or unit type, as listed in paragraph (a)(8)(i) of this section.

(i) For affected combustion turbines in the intermediate or base load subcategory, your CO₂ emission standard while operating during a system emergency is the applicable emission standard for low load combustion turbines.

(ii) [Reserved]

* * * * *

■ 11. Amend § 60.5555a by:

- a. Revising paragraphs (a)(2)(v) and (c)(3)(iii); and
- b. Removing paragraphs (f) and (g).

The revisions read as follows:

§ 60.5555a What reports must I submit and when?

(a) * * *

(2) * * *

(v) Consistent with § 60.5520a, the CO₂ emissions standard (as identified in table 1 to this subpart) with which your affected EGU must comply; and

* * * * *

(c) * * *

(3) * * *

(iii) For reconstructed units, reporting of emissions data shall begin at the date on which the EGU becomes an affected unit under this subpart, provided that the ECMPs Client Tool is able to receive and process net energy output data on that date. Otherwise, emissions data reporting shall be on a gross energy

output basis until the date that the Client Tool is first able to receive and process net energy output data.

* * * * *

■ 12. Amend § 60.5560a by revising paragraph (f) to read as follows:

§ 60.5560a What records must I maintain?

* * * * *

(f) You must keep records of the calculations you performed to assess compliance with each applicable CO₂ mass emissions standard in table 1 to this subpart.

* * * * *

■ 13. Amend § 60.5580a by:

- a. Removing the definition of *Coal-fired Electric Generating Unit*;
- b. Revising the definitions of *Electric Generating Units or EGU* and *Gross energy output*;
- c. Removing the definition of *Integrated gasification combined cycle facility or IGCC*; and
- d. Revising the definitions of *Intermediate load combustion turbine*, *Low load combustion turbine*, *Net-electric sales*, and *System emergency*.

The revisions read as follows:

§ 60.5580a What definitions apply to this subpart?

* * * * *

Electric Generating Units or EGU means any stationary combustion turbine that is subject to this rule (*i.e.*, meets the applicability criteria).

* * * * *

Gross energy output means:

(1) For stationary combustion turbines, the gross electric or direct mechanical output from both the EGU (including, but not limited to, output from steam turbine(s), combustion turbine(s), and gas expander(s)) plus 100 percent of the useful thermal output.

(2) [Reserved]

(3) For combined heat and power facilities, where at least 20.0 percent of

the total gross energy output consists of useful thermal output on a 12-operating-month rolling average basis, the gross electric or mechanical output from the affected EGU (including, but not limited to, output from steam turbine(s), combustion turbine(s), and gas expander(s)) minus any electricity used to power the feedwater pumps, that difference divided by 0.95, plus 100 percent of the useful thermal output.

* * * * *

Intermediate load combustion turbine means a stationary combustion turbine that is not a low load or base load combustion turbine. An intermediate load combustion turbine supplies more than 20 percent of its potential electric output as net-electric sales on both a 12-operating month and a 3-year rolling average basis and supplies 40 percent or less of its potential electric output as net-electric sales on either a 12-operating month or a 3-year rolling average basis.

* * * * *

Low load combustion turbine means a stationary combustion turbine that supplies 20 percent or less of its potential electric output as net-electric sales on either a 12-operating month or a 3-year rolling average basis.

* * * * *

Net-electric sales means:

(1) The gross electric sales to the utility power distribution system minus purchased power; or

(2) For combined heat and power facilities, where at least 20.0 percent of the total gross energy output consists of useful thermal output on a 12-operating month basis, the gross electric sales to the utility power distribution system minus purchased power and the applicable percentage of purchased power of the thermal host facility or facilities. The applicable percentage of purchased power for CHP facilities is determined based on the percentage of the total thermal load of the host facility supplied to the host facility by the CHP facility. For example, if a CHP facility

serves 50 percent of a thermal host's thermal demand, the owner/operator of the CHP facility would subtract 50 percent of the thermal host's electric purchased power when calculating net-electric sales.

(3) Electricity supplied to other facilities that produce electricity to offset auxiliary loads are included when calculating net-electric sales.

(4) Electric sales during a system emergency are not included when calculating net-electric sales.

* * * * *

System emergency means periods when the Reliability Coordinator has declared an Energy Emergency Alert level 2 or 3 which should follow NERC Reliability Standard EOP-011-2, its successor, or equivalent.

* * * * *

■ 14. Revise table 1 to subpart TTTTa to read as follows:

TABLE 1 TO SUBPART TTTTa OF PART 60—CO₂ EMISSION STANDARDS FOR AFFECTED STATIONARY COMBUSTION TURBINES THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER MAY 23, 2023 (GROSS OR NET ENERGY OUTPUT-BASED STANDARDS APPLICABLE AS APPROVED BY THE ADMINISTRATOR)

[Note: Numerical values of 1,000 or greater have a minimum of 3 significant figures and numerical values of less than 1,000 have a minimum of 2 significant figures]

Affected EGU category	CO ₂ emission standard
Base load combustion turbines	360 to 560 kg CO ₂ /MWh (800 to 1,250 lb CO ₂ /MWh) of gross energy output; or 370 to 570 kg CO ₂ /MWh (820 to 1,280 lb CO ₂ /MWh) of net energy output as determined by the procedures in § 60.5525a.
Intermediate load combustion turbines	530 to 710 kg CO ₂ /MWh (1,170 to 1,560 lb CO ₂ /MWh) of gross energy output; or 540 to 720 kg CO ₂ /MWh (1,190 to 1,590 lb CO ₂ /MWh) of net energy output as determined by the procedures in § 60.5525a.
Low load combustion turbines	Between 50 to 69 kg CO ₂ /GJ (120 to 160 lb CO ₂ /MMBtu) of heat input as determined by the procedures in § 60.5525a.

Table 2 to Subpart TTTTa of Part 60 [Removed and Reserved]

■ 15. Remove and reserve table 2 to subpart TTTTa.

■ 16. Revise table 3 to subpart TTTTa to read as follows:

TABLE 3 TO SUBPART TTTTa OF PART 60—APPLICABILITY OF SUBPART A OF THIS PART TO THIS SUBPART

General provisions citation	Subject of citation	Applies to subpart TTTTa	Explanation
§ 60.1	Applicability	Yes.	Additional terms defined in § 60.5580a.
§ 60.2	Definitions	Yes	
§ 60.3	Units and Abbreviations	Yes.	
§ 60.4	Address	Yes	Does not apply to information reported electronically through ECMPS. Duplicate submittals are not required.
§ 60.5	Determination of construction or modification.	Yes.	
§ 60.6	Review of plans	Yes.	Only the requirements to submit the notifications in § 60.7(a)(1) and (3) and to keep records of malfunctions in § 60.7(b), if applicable.
§ 60.7	Notification and Recordkeeping	Yes	
§ 60.8(a)	Performance tests	No.	Administrator can approve alternate methods.
§ 60.8(b)	Performance test method alternatives	Yes	
§ 60.8(c)–(f)	Conducting performance tests	No.	

TABLE 3 TO SUBPART TTTTa OF PART 60—APPLICABILITY OF SUBPART A OF THIS PART TO THIS SUBPART—Continued

General provisions citation	Subject of citation	Applies to subpart TTTTa	Explanation
§ 60.9	Availability of Information	Yes.	All monitoring is done according to part 75. Administrator can approve alternative monitoring procedures or requirements.
§ 60.10	State authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	No.	
§ 60.12	Circumvention	Yes.	
§ 60.13 (a)–(h), (j)	Monitoring requirements	No	
§ 60.13 (i)	Monitoring requirements	Yes	
§ 60.14	Modification	No.	
§ 60.15	Reconstruction	Yes.	
§ 60.16	Priority list	No.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements ..	No.	Does not apply to notifications under § 75.61 of this chapter or to information reported through ECMPS.
§ 60.19	General notification and reporting requirements.	Yes	

Subpart UUUUb—[Removed and Reserved]

■ 17. Remove and reserve subpart UUUUb, consisting of §§ 60.5700b through 60.5880b.

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Part III

Environmental Protection Agency

40 CFR Part 60

Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2025-0124; FRL-12674.1-01-OAR]

RIN 2060-AX00

Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In this action, the U.S. Environmental Protection Agency (EPA) is supplementing its proposal to repeal all greenhouse gas (GHG) emission standards for fossil fuel-fired electric generating units (EGUs) to effectuate the best reading of Clean Air Act (CAA) section 111. We propose that CAA section 111 does not authorize the EPA to regulate emissions from power plants in response to global climate change concerns. For the multiple and independent reasons described herein, this additional rationale would also require rescinding the Administrator's contrary findings and determinations in 2015 and repealing all associated 2015 and 2024 GHG standards for the fossil fuel-fired EGU source category. In a separate action published concurrently with this supplemental notice, the EPA is finalizing the repeal of certain 2024 GHG standards for the fossil fuel-fired EGU source category on distinct legal and technical grounds. We are not reopening that final rule. Nor are we soliciting further comment on those issues through this supplemental notice, except to the extent that commenters believe the final rule bears on the distinct questions of statutory authority addressed herein.

DATES: Comments must be received on or before November 2, 2026. Comments on the information collection provisions submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) are best assured of consideration by OMB if OMB receives a copy of your comments on or before October 19, 2026. Please refer to the PRA section under "Statutory and E.O. Reviews" in this preamble for specific instructions.

Public Hearing. The EPA will hold a virtual public hearing on October 1, 2026. Please refer to the **SUPPLEMENTARY INFORMATION** section for information on registering for the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2025-0124, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov> (our preferred method) website. Follow the online instructions for submitting comments.
- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2025-0124 in the subject line of the message.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2025-0124, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time (ET), Monday through 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 any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Ms. Lisa Thompson, Industrial Processing and Power Division (D243-02), Office of Clean Air Programs, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5158 and email address: thompson.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. The hearing will be held via virtual platform on October 1, 2026. The EPA will announce further details at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>.

The EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power> or contact the public hearing team at (888) 372-8699 or by email at IPPDpublichearing@epa.gov. The last

day to pre-register to speak at the hearing will be September 29, 2026. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to submit a copy of their oral testimony as written comments electronically to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at IPPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require special accommodations such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by September 24, 2026. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA established a docket for this action under Docket ID No. EPA-HQ-OAR-2025-0124. The docket lists all documents at <https://www.regulations.gov>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) 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 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 at (202) 566-1744. The docket office has 10 business days to respond to such requests. With the exception of such material, 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. ET, Monday through Friday (except for Federal holidays). 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.

Written Comments. Direct your comments to Docket ID No. EPA-HQ-OAR-2025-0124. Under the EPA's policy, the Agency includes all comments in the public docket without change and makes them available online at <https://www.regulations.gov>, including any personal information provided, unless a submission contains information claimed as CBI or other information for which a statute restricts disclosure. Do not submit electronically to <https://www.regulations.gov> any information that you consider to be CBI or other information for which a statute restricts disclosure. Submit such information as described in the Submitting CBI section of this preamble.

The EPA may publish any comment it receives to the public docket. A written comment must accompany any multimedia submission (e.g., audio or video). The EPA considers the written comment the official comment and expects it to address all points the commenter wishes to make. The EPA will generally not consider comments or supporting materials that appear outside the primary submission (i.e., on websites, cloud storage, or other file-sharing systems). For additional submission methods, the EPA's full public comment policy, information about CBI or multimedia submissions, and guidance on making effective comments, visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov> website allows commenters to submit comments anonymously, which means the EPA will not know the commenter's identity or contact information unless the commenter provides it in the body of the comment. If a commenter emails a comment directly to the EPA rather

than using <https://www.regulations.gov>, the EPA's system automatically captures the sender's email address, and the Agency includes that address in the public docket and makes it available online. If a commenter submits an electronic comment, the EPA recommends including the commenter's name and other contact information in the body of the comment and with any digital storage media submitted. If the EPA cannot read a comment due to technical difficulties and cannot contact the commenter for clarification, the Agency may be unable to consider the comment. Submit electronic files without special characters, encryption, defects, or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

The EPA solicits comment on numerous aspects of this proposed rule. The EPA indexes each comment solicitation with an identifier (e.g., "C-1, C-2, . . .") to provide a consistent framework for effective, efficient commenting. Accordingly, the EPA asks commenters to include the corresponding identifier when submitting comments relevant to that solicitation. Include the identifier in a heading or within the text of each comment (e.g., "In response to C-1, . . .") to make clear which solicitation the commenter is addressing. The EPA emphasizes that the Agency is not limiting comment to these identified areas and encourages commenters to provide any other comments relevant to this supplemental proposal.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov>. Clearly mark the part or all the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in the *Written Comments* section of this preamble. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic

public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Clean Air Programs (OCAP) at the email address: ocapcbi@epa.gov and, as described earlier in this preamble, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble to receive instructions.

Preamble acronyms and abbreviations. Throughout this document the use of "we," "us," or "our" is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACE	Affordable Clean Energy [rule]
BSER	best system of emission reduction
CAA	Clean Air Act
CCS	carbon capture and sequestration/ storage
CO ₂	carbon dioxide
CPP	Clean Power Plan
CPS	Carbon Pollution Standards rule
EGU	electric generating unit
EIA	economic impact analysis
E.O.	Executive Order
EPA	Environmental Protection Agency
FR	Federal Register
GHG	greenhouse gas
GMST	global mean surface temperature
GSLR	global sea level rise
HAP	hazardous air pollutant
HFC	hydrofluorocarbons
IGCC	integrated gasification combined cycle
IRA	Inflation Reduction Act
NAAQS	National Ambient Air Quality Standards
NPRM	Notice of Proposed Rulemaking
NSPS	new source performance standards
OMB	Office of Management and Budget

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 - J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

I. General Information

A. Does this action apply to me?

Fossil fuel-fired electric utility steam generating units and stationary combustion turbine EGUs that provide electricity to the electric grid (a utility power distribution system) comprise the source category that is subject to this action. The 2022 North American Industry Classification System (NAICS) code for the source category is 221112. The EPA does not intend this identification to be exhaustive but rather to provide a guide for readers regarding the entities that this proposed action is likely to affect.

The proposed repeal of 40 CFR part 60, subpart TTTT, once promulgated, would be applicable to stationary combustion turbines that commenced construction or modification after January 8, 2014, or reconstruction after June 18, 2014, and on or before May 23, 2023, and any steam generating unit or integrated gasification combined cycle (IGCC) facility that commenced

construction after January 8, 2014, or commenced modification or reconstruction after June 18, 2014. The proposed repeal of 40 CFR part 60, subpart TTTT, once promulgated, would be applicable to stationary combustion turbines that began construction or reconstruction after May 23, 2023, and any steam generating unit that commenced modification after May 23, 2023.

B. Where can I get a copy of this document and other related information?

In addition to the docket, an electronic copy of this proposed action will be on the internet. Following signature by the Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>. Following publication in the **Federal Register** (FR), the EPA will post the FR version at this same website.

II. Executive Summary

A. Introduction

On June 17, 2025, the EPA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** entitled “Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units.” 90 FR 25752 (“June 2025 NPRM”). In that action, we proposed two independent pathways for revisiting the GHG standards of performance for the fossil fuel-fired EGU source category established in the 2015 New Source Performance Standards, 80 FR 64510 (Oct. 23, 2015) (“2015 NSPS”), and 2024 Carbon Pollution Standards, 89 FR 39798 (May 9, 2024) (“2024 CPS”). The primary pathway proposed to repeal all GHG standards of performance for fossil fuel-fired EGUs for lack of authority based on the conclusion that such power plants do not “contribute significantly” to air pollution that endangers public health or welfare. The alternative pathway proposed to repeal many requirements in the 2024 CPS based on a reconsideration of the best system of emission reduction (BSER) determinations supporting the requirements.

In a final rule issued concurrently with this supplemental notice, the EPA is finalizing the repeal of the majority of the 2024 CPS requirements based on a reassessment of the BSER for the relevant subcategories.¹ The EPA notes

¹ See *Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units*, available in Docket ID EPA–HQ–OAR–2025–0124.

in that final rule that it is seeking additional public comment in a separate action (*i.e.*, in this supplemental notice) on the underlying question raised in the primary basis of the June 2025 NPRM: Whether the EPA lacks statutory authority to regulate GHG emissions from power plants under CAA section 111.²

This supplemental notice proposes additional approaches to that question in light of the Agency’s intervening final action entitled “Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act,” 91 FR 7686 (Feb. 18, 2026) (“Endangerment Finding Rescission”). In that final rule, the EPA rescinded the Administrator’s 2009 findings of endangerment and contribution, and repealed all GHG emission standards, for new motor vehicles and engines based on the conclusion that the Agency lacks statutory authority under CAA section 202(a)(1) to regulate in response to global climate change concerns. In this supplemental notice, we propose that the EPA lacks authority under CAA section 111 to regulate power plants in response to global climate change concerns for multiple, independent reasons. The approach and rationales proposed in this supplemental notice would require the same regulatory actions contemplated in the primary proposal in the June 2025 NPRM—the repeal of all fossil fuel-fired EGU GHG standards for lack of authority—but for different reasons. Whereas the primary proposal in the June 2025 NPRM sought public comment on, among other things, whether fossil fuel-fired EGUs “contribute significantly” to air pollution, this supplemental notice seeks public comment on the distinct question whether global climate change concerns satisfy the threshold requirement in CAA section 111(b)(1)(A) that a source category emissions contribute significantly to “air pollution which may reasonably be anticipated to endanger public health or welfare.” We will evaluate both proposed approaches and rationales in taking final action, as both issues—

² The EPA is not reopening or soliciting further comment on the distinct issues addressed in the contemporaneous final rule. Commenters are welcome to articulate whether and why they believe the actions and rationales adopted in the final rule are relevant to the distinct question addressed in this supplemental proposal, but the EPA generally will not respond to comments that are limited to the issues resolved in the final rule. Interested parties were invited to comment on those issues in connection with the alternative basis presented in the June 2025 NPRM and may review the EPA’s summary of comments and responses thereto in the final rule preamble and associated response to comments (RTC).

contribution and endangerment—were the subject of significant interpretive and policy changes in the 2009 Endangerment Finding and the 2015 NSPS and 2024 CPS that extended the Agency's novel approach to power plant stationary sources.³

In 2009, the EPA took the unprecedented step of asserting authority to regulate GHG emissions in a standalone action that launched the Agency into a course of regulation that fundamentally reshaped many aspects of the Nation's economic and social life. 74 FR 66496 (Dec. 15, 2009) (“2009 Endangerment Finding”).⁴ In the 2009 Endangerment Finding, we interpreted CAA section 202(a)(1) for the first time to authorize regulation of domestic emissions from new motor vehicles and engines based on global climate change concerns rather than air pollution that endangers public health or welfare through local or regional exposure. 74 FR 66526–27. We relied on that interpretation to define both the relevant “air pollution” and the relevant “air pollutant” as the combination of six “well-mixed GHGs”—carbon dioxide (CO₂), methane, nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—while reserving the right to include additional “climate forcers” in these definitions in the future. 74 FR 66516–17, 66536–37.

The EPA subsequently relied on the 2009 Endangerment Finding as the foundation for a new regulatory construct that subjected an increasing number of sectors to controls in the name of addressing global climate change concerns. In 2015, we extended the GHG initiative to power plant stationary sources regulated under CAA section 111 by promulgating GHG emissions standards for new, modified,

and reconstructed fossil fuel-fired EGUs in the 2015 NSPS, 80 FR 64510, and GHG emission guidelines for existing fossil fuel-fired EGUs, 80 FR 64662 (“Clean Power Plan” or “2015 CPP”).⁵ In these related actions, we applied the expansive reading of CAA section 202(a)(1) adopted in the 2009 Endangerment Finding to conclude for the first time that a source category could be subject to additional regulatory controls under CAA section 111 based on global climate change concerns. We also made a finding in the alternative, again relying on the 2009 Endangerment Finding, that global GHG concentrations in the atmosphere constitute air pollution that endangers public health and welfare and that GHG emissions from power plants cause or contribute significantly to that air pollution. After the Supreme Court largely vacated these regulatory efforts in *West Virginia v. EPA*, 597 U.S. 697 (2022), we responded by promulgating more stringent GHG standards for new sources and reissuing emission guidelines for existing sources in the 2024 CPS. Meanwhile, global GHG concentrations in the upper atmosphere have continued to rise, driven primarily by increased emissions from foreign sources,⁶ all without producing the degree of adverse impacts to public health and welfare in the U.S. anticipated in the 2009 Endangerment Finding and 2015 NSPS and 2015 CPP.

Upon further review, and in light of subsequent developments since 2009 and 2015, the EPA is seeking further public comment on its statutory authority to regulate GHG emissions from fossil fuel-fired EGUs in response to global climate change concerns. The Supreme Court has significantly clarified the limits on the EPA's authority in recent years, including in *West Virginia, Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014) (“*UARG*”), and *Michigan v. EPA*, 576 U.S. 743 (2015), and made clear in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), that Federal agencies can no longer rely on statutory silence or ambiguity to expand regulatory power. The EPA recently considered these issues in the Endangerment Finding Rescission, in which we concluded that CAA section 202(a)(1) is best read as authorizing regulation of air pollution that threatens

health and welfare through local and regional exposure and does not authorize regulation in the name of global climate change concerns. We further concluded that Congress had not provided the requisite clear authorization for our GHG emissions program under CAA section 202(a)(1), which had resulted in an unprecedented expansion of regulatory power with adverse effects on the economy and American households. And we concluded that attempting to address global climate change through regulation under CAA section 202(a)(1) was futile based on modeling showing that new motor vehicle and engine GHG emission standards would have no more than a *de minimis* impact on key indicators of the health and welfare concerns animating regulation. We thus rescinded the 2009 Endangerment Finding and repealed all associated GHG emission standards to ensure that the EPA exercised “only those powers given to [it] by Congress”⁷ and to follow “the best reading of the statute,” which is fixed at the time of enactment.⁸

Informed by these conclusions, the EPA in this supplemental proposal seeks additional public comment on the Agency's statutory authority to regulate GHG emissions from power plants. We propose that the text, structure, and history of CAA section 111, the applicability and implications of the major questions doctrine, and the futility of power plant GHG standards in relation to the unique and global scale of the underlying problem similarly support the conclusion that the EPA lacks authority to impose additional controls on power plants in response to global climate change concerns under the statutory standard for regulation.

The remainder of this section describes the need for regulatory action and the scope of this proposed action. These interests emphasize the need for urgent action to avoid further expenditures in reliance on a potentially unlawful regulatory framework that may not further public health or welfare in any material respect relevant to the global climate change concerns identified and relied upon by the EPA since 2015.

Section III of this preamble sets out relevant background, including the EPA's statutory authority under CAA section 111, our historical approach to regulating emissions from new and existing stationary sources, our changes in position with respect to regulating in response to global climate change

³ The EPA is not soliciting further comment on the primary proposal in the June 2025 NPRM. Commenters are welcome to articulate whether and why they believe the distinct rationales presented in this supplemental proposal are or are not preferable to the rationale presented in the June 2025 NPRM, but the EPA generally will not respond to comments that are limited to the primary proposal in the June 2025 NPRM. Interested parties were invited to comment on those issues in connection with the primary proposal in the June 2025 NPRM, and the Agency will address such comments as appropriate in a forthcoming final rule addressing the rationales presented in both the primary proposal in the June 2025 NPRM and this supplemental proposal.

⁴ See also “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments” (“EF RTC”), available in a Memorandum to Docket entitled “EPA's Response to Public Comments on the 2009 Endangerment and Cause or Contribute Findings for Greenhouse Gases: Volumes 1–11,” Document ID EPA-HQ-OAR-2025-0194–31053.

⁵ References to “GHG standards” here and elsewhere include new source performance standards (NSPS) promulgated under CAA section 111(b) and emission guidelines for existing sources promulgated under CAA section 111(d). See 42 U.S.C. 7411(b), (d).

⁶ Crippa, M. et al. (2023). GHG emissions of all world countries. *Publications Office of the European Union*: <https://doi.org/10.2760/953322>.

⁷ 91 FR 7686, 7688 (Feb. 18, 2026) (quoting *West Virginia*, 597 U.S. at 723).

⁸ *Id.* (quoting *Loper Bright*, 603 U.S. at 400–01).

concerns in 2009 and 2015, as well as relevant litigation, and our recent reconsideration and rescission of the 2009 Endangerment Finding.

Section IV of this preamble describes our legal authority for the proposed rescissions and repeals of the 2015 NSPS, 2024 CPS, and any underlying listings, findings, and determinations with respect to GHG emissions from fossil fuel-fired EGUs under CAA section 111. We propose that CAA section 111 authorizes these proposed actions, together with agencies' authority to revise or rescind prior actions by acknowledging the change, providing a reasonable explanation, and considering legitimate reliance interests. In the June 2025 NPRM, we acknowledged that our prior decisions to regulate GHG emissions from fossil fuel-fired EGUs have caused significant expenditure of resources by Federal, State, local, and private-sector entities and solicited comment on any legitimate reliance interests relevant to the proposed rescissions and repeals. In this supplemental proposal, we solicit comment on whether the additional bases set out in this supplemental proposal implicate distinct reliance interests and how the EPA should consider such interests consistent with applicable legal principles and limits on our statutory authority.

Section V.A of this preamble discusses the EPA's additional statutory interpretation rationale for the proposed rescissions and repeals. First, we propose that EPA lacks authority to retain these standards under CAA section 111(b)(1)(A), which subjects a source category's emissions to regulation when the Administrator determines that the source category causes or contributes significantly to "air pollution which may reasonably be anticipated to endanger public health or welfare." Specifically, we propose that "air pollution" is best read as that which itself threatens health or welfare through local or regional exposure, consistent with the ordinary meaning of the term at the time of enactment, the surrounding language of the provision, the statute's structure and amendment history, and the EPA's longstanding practice prior to 2015. For these reasons, we propose that the 2015 NSPS and 2024 CPS erred in listing and regulating fossil fuel-fired EGUs based on global climate change concerns that fall outside the scope of "air pollution" within the meaning of the CAA section 111. Second, we propose that additional flaws in the Agency's findings and determinations in the 2015 NSPS, as endorsed by the 2024 CPS, render them independently unlawful and reinforce

the proposed conclusions previously discussed. These flaws include the effective listing of a new source category without undertaking a new listing under CAA section 111(b)(1)(A) and reliance on the flawed 2009 Endangerment Finding.

Section V.B discusses the EPA's major questions doctrine rationale for the proposed rescissions and repeals. We propose that, consistent with the Supreme Court's decision in *West Virginia*, the major questions doctrine applies to the Agency's economically and politically significant assertion of authority to regulate power plant emissions based on global climate change concerns. We further propose that Congress did not clearly authorize the EPA to regulate power plants in response to global climate change concerns when it enacted the standard for regulation in CAA section 111(b)(1)(A) and authorized the Administrator to determine whether emissions satisfy that standard. That is, Congress did not clearly provide that global climate change concerns may trigger regulation under CAA section 111(b)(1)(A) and therefore did not clearly authorize the Administrator to invoke that standard to subject power plant emissions to additional regulatory controls commensurate with the unique and global nature of the problem. Rather, we propose that the appropriate policy response to global climate change concerns is a decision vested in Congress, and that Congress did not decide that the Nation's policy response to these concerns would include regulating power plants when it enacted CAA section 111.

Section V.C discusses the EPA's proposed futility rationale for the proposed rescissions and repeals. In developing this supplemental proposal, the Agency used generally accepted models to estimate the impacts on global mean surface temperature (GMST) and global sea level rise (GSLR) of eliminating all GHG emissions from the U.S. power sector as an overly conservative proxy for the potential impacts of GHG emission restrictions under CAA section 111. The EPA proposes that the results of this modeling demonstrate that even the complete elimination of GHG emissions from the U.S. power sector, and at minimum, any plausible reduction in GHG emissions from the U.S. power sector that could result from application of CAA section 111, would have no more than *de minimis* impacts on the key indicators of adverse impacts attributed to global climate change. On this basis, the EPA proposes that the futility of regulation supports the

conclusion that global climate change concerns cannot satisfy the prerequisite for imposing regulatory controls under CAA section 111. The EPA further propose that the inability of GHG standards to address global climate change supports the conclusion that GHG emissions from fossil fuel-fired EGUs do not "contribute significantly" to air pollution. Finally, the EPA proposes that retaining futile GHG standards for fossil fuel-fired EGUs under CAA section 111 would be unreasonable given the significant costs they impose on regulated parties, consumers, and the economy.

Section VI of this preamble discusses the proposed repeals of all GHG regulations for fossil fuel-fired EGUs under CAA section 111, including the relationship of these repeals to distinct regulatory programs and Federal preemption. We propose that absent emissions satisfying the statutory prerequisite for regulation under CAA section 111(b)(1)(A), the EPA must fully repeal the 2015 NSPS and 2024 CPS, which listed (and retained) a combined source category of fossil fuel-fired EGUs for the purpose of regulating GHG emissions. We explain that these repeals would not disturb criteria-pollutant standards or other requirements applicable to power plants currently listed in the fossil fuel-fired EGU source category. Nor would returning to the pre-2015 status quo alter the CAA's displacement of Federal common law or the CAA's preemptive force with respect to State law.

Section VII of this preamble specifically requests comment on key aspects of this supplemental notice and indexes comment solicitation to promote public participation and facilitate our review of public comments. The EPA is not limiting public participation to the issues raised in this section and will respond to all significant comments within the scope of this supplemental proposal. Rather, we are highlighting aspects of this supplemental proposal for which public input would be particularly helpful in determining whether to finalize the additional rationales proposed in this supplemental notice.

B. Need for Regulatory Action

Immediately upon taking office in 2025, President Trump established as the policy of the United States new Executive Branch priorities for energy, transportation, and consumer choice and committed agencies to ensuring regulations remain within constitutional and statutory bounds.

On January 20, 2025, President Trump issued Executive Order (E.O.) 14154,

“Unleashing American Energy.”⁹ In that E.O., the President established that it is “the policy of the United States to ensure that all regulatory requirements related to energy are grounded in clearly applicable law,”¹⁰ and directed Federal agencies, including the EPA, to review existing regulations “to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources—with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources.”¹¹ The President also directed the Administrator to submit recommendations to the Director of the Office of Management and Budget (OMB) on the legality and continuing applicability of the 2009 Endangerment Finding.¹²

On February 19, 2025, President Trump issued E.O. 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.”¹³ This E.O. established a national policy requiring agencies, including the EPA, to “focus the executive branch’s limited enforcement resources on regulations squarely authorized by constitutional Federal statutes” and to “initiate a process to review all regulations subject to their sole or joint jurisdiction for consistency with law and Administration policy.”¹⁴ Among other things, the E.O. instructed agencies to identify regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition and regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority. In the course of this review, the EPA identified GHG standards for power plants as regulations that may be based on interpretations that are inconsistent with the best reading of CAA section 111 and address a significant issue without clear statutory authorization.

On April 8, 2025, President Trump issued E.O. 14261, “Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241.”¹⁵ This E.O. states that “coal is essential to our national and economic security” and establishes “a national priority to support the domestic coal industry by removing Federal regulatory

barriers that undermine coal production.”¹⁶ The E.O. finds that “coal resources will be critical to meeting the rise in electricity demand due to the resurgence of domestic manufacturing and the construction of artificial intelligence data processing centers” and to increasing “energy supply,” lowering “electricity costs,” stabilizing the power grid, creating “high paying jobs,” supporting “burgeoning industries,” and assisting allies abroad.¹⁷ Accordingly, the E.O. directs the EPA, among other Federal agencies, to identify regulatory actions that seek to transition the Nation away from coal production and electricity generation and consider revising or rescinding such actions consistent with applicable law.¹⁸

Upon confirmation by the Senate, Administrator Lee Zeldin committed the EPA to prioritizing its core statutory missions and ensuring that all regulatory actions are clearly grounded in statutory authority and the best reading of the law. As part of these efforts, and consistent with E.O. 14154, E.O. 14219, and E.O. 14261, the Administrator initiated a review of the 2009 Endangerment Finding and related regulations bearing on the energy sector, including power plant GHG emission standards. On February 19, 2025, the Administrator submitted a memorandum to the OMB Director recommending that the EPA reconsider the 2009 Endangerment Finding to address legal and scientific developments that appeared to undermine the bases for that action and subsequent regulations. The Administrator noted that recent Supreme Court decisions, including *Loper Bright*, *West Virginia*, *UARG*, and *Michigan*, provided further instruction as to how we should interpret and apply the statutes Congress entrusted us to administer. The Administrator further noted that the 2009 Endangerment Finding recognized significant uncertainties in its conclusions and assumptions that should be evaluated in light of more recent empirical data and scientific evidence. Accordingly, the Administrator announced on March 12, 2025, that the EPA would reconsider the 2009 Endangerment Finding and subsequent regulations under CAA section 202(a)(1) to determine whether our GHG regulations have an adequate statutory basis and to seek public input on developments since 2009.¹⁹ That

same day, the Administrator announced that the EPA would initiate a rulemaking to reconsider our GHG emission standards for power plants under CAA section 111.²⁰

In June 2025, the EPA completed its initial review of GHG emission standards for power plants under CAA section 111. Based on a reassessment of the legal and technical conclusions in the 2015 NSPS and 2024 CPS, we sought public comment in the June 2025 NPRM on a primary proposal and an alternative proposal.²¹ The primary proposal involved repealing all GHG emissions standards for new and existing sources in the fossil fuel-fired EGU source category. Specifically, we proposed to determine that CAA section 111 requires the Agency to make a finding that GHG emissions from fossil fuel-fired power plants “cause[], or contribute significantly” to “air pollution which may reasonably be anticipated to endanger public health or welfare” (which we shorthanded as “dangerous air pollution”) as a predicate to regulating GHG emissions from those power plants. We further proposed to find that GHG emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution. The alternative proposal was based on the EPA’s reexamination of the BSER determinations and associated requirements for fossil fuel-fired power plants in the 2024 CPS. Specifically, we proposed to repeal requirements in the 2024 CPS predicated on the Agency’s prior determinations that 90 percent carbon capture and storage (CCS) and/or 40 percent natural gas co-firing were BSER for the relevant subcategories.

In August 2025, the EPA completed its initial review of GHG emission standards for new motor vehicles and engines under CAA section 202(a)(1). Based on substantial concerns with the legal and scientific underpinnings of these regulations and the associated findings, we proposed to rescind the 2009 Endangerment Finding and repeal associated GHG emission standards on several alternative legal, policy, and scientific bases.

In February 2026, the EPA took final action to rescind the 2009

Vought, Director, Office of Management and Budget (Feb. 19, 2025) (Feb. 19, 2025 Memo), Docket ID No. EPA-HQ-OAR-2025-0194-0059.

²⁰ Trump EPA Announces Reconsideration of Biden-Harris Rule, “Clean Power Plan 2.0,” That Prioritized Shutting Down Power Plants While Raising Costs on American Families (Mar. 12, 2025), available at <https://www.epa.gov/newsreleases/trump-epa-announces-reconsideration-biden-harris-rule-clean-power-plan-20-prioritized>.

²¹ 90 FR 25752 (June 17, 2025).

⁹ 90 FR 8353 (Jan. 29, 2025).

¹⁰ *Id.* section 2.

¹¹ *Id.* section 3(a).

¹² *Id.* section 6(f).

¹³ 90 FR 10583 (Feb. 25, 2025).

¹⁴ *Id.* sections 1, 2.

¹⁵ 90 FR 15517 (Apr. 14, 2025).

¹⁶ *Id.* section 2.

¹⁷ *Id.* section 1.

¹⁸ *Id.* section 6(a)–(b).

¹⁹ Memorandum from Lee Zeldin, Administrator, U.S. Environmental Protection Agency, to Russell

Endangerment Finding and repeal associated GHG emission standards for new motor vehicles and engines under CAA section 202(a)(1). We concluded in the Endangerment Finding Rescission that the EPA lacks statutory authority under CAA section 202(a)(1) to regulate in response to global climate change concerns for the legal reasons discussed at proposal. Specifically, we concluded that global climate change concerns associated with GHG emissions are not “air pollution which may reasonably be anticipated to endanger public health or welfare” within the meaning of CAA section 202(a)(1), that Congress had not clearly authorized such an economically and politically significant assertion of authority, and that the futility of emission standards further supported the rescission and repeals in multiple respects.

In today’s actions, the EPA is returning to the issues raised in the June 2025 NPRM regarding our statutory authority to regulate GHG emissions from power plants under CAA section 111. Concurrently with this supplemental notice, the EPA is taking final action to repeal most of the provisions of the 2024 CPS based on a record-focused reevaluation of the BSER determinations for the relevant subcategories. That concurrent final rule repeals the associated aspects of the 2024 CPS, consistent with the alternative proposal in the June 2025 NPRM, while taking no action on the primary proposal in the June 2025 NPRM. The EPA responded to comments received on the alternative proposal in the RTC for the final rule. The EPA is not reopening the record for the final rule in this supplemental notice and is not seeking further public comment on the record-based considerations addressed in the final rule.

This supplemental proposal seeks public comment on the question whether the EPA lacks authority under CAA section 111 to regulate GHG emissions from power plants in response to global climate change concerns given CAA section 111(b)(1)(A)’s predicate requirement that their emissions contribute significantly to “air pollution which may reasonably be anticipated to endanger public health or welfare.” The rationale proposed in this supplemental notice is distinct from the rationale presented in the primary proposal of the June 2025 NPRM, which sought public comment on whether the EPA has authority to regulate GHG emissions from power plants based on the significance of the fossil fuel-fired EGU source category’s contribution. The EPA

is not seeking additional comment on the primary proposal in the June 2025 NPRM in this supplemental notice. Rather, we are rather soliciting public comment on distinct statutory authority rationales in light of the Endangerment Finding Rescission: the best reading of CAA section 111 with respect to fossil fuel-fired EGUs; the applicability and implications of the major questions doctrine; the futility of GHG emission standards for power plants in addressing global climate change concerns; and several additional issues, including the ongoing validity of the Agency’s endangerment and significant contribution findings in the alternative in the 2015 NSPS, as reaffirmed in the 2024 CPS. In contrast to the record-based issues related to BSER determinations addressed in the concurrent final rule, this supplemental proposal analyzes the text and structure of the CAA to ascertain its best reading, bolstered by statutory and legislative history and the body of regulatory history relevant to the scope of the Agency’s legal authority, including all aspects of the 2015 NSPS, the vacated 2015 CPP, and the 2024 CPS, as well as regulatory actions that predated the Agency’s 2015 changes in position. This information is relevant to how the statute has been applied and, for major questions doctrine purposes, to the permissibility of the scope of the authority we first asserted in 2015.

Should the EPA finalize its proposed conclusion that the Agency lacks statutory authority to regulate GHG emissions from power plants based on global climate change concerns under the statutory standard for regulation in CAA section 111(b)(1)(A), that final action would remove the legal basis for all prior actions taken under CAA section 111 to regulate GHG emissions from these sources in response to global climate change. This conclusion would require the EPA to rescind its findings and determinations in the 2015 NSPS and repeal all GHG regulations and requirements for power plants under CAA section 111, including those in the 2015 NSPS and those in the 2024 CPS that are not being repealed on other grounds in the concurrent final rule. With respect to the aspects of the 2024 CPS being repealed on other grounds in the concurrent final rule, this conclusion would independently reinforce the basis for repeal based on a lack of statutory authority.²²

²² Because the Supreme Court invalidated the 2015 CPP in *West Virginia* by reversing the D.C. Circuit’s vacatur of the EPA’s subsequent repeal of the 2015 CPP, any similar findings or determinations in the 2015 CPP are no longer in effect. 597 U.S. 697; see *Am. Lung Ass’n v. EPA*,

III. Background

This section discusses the EPA’s statutory authority under CAA section 111, relevant statutory, legislative, and regulatory history, and the Agency’s prior changes in position with respect to the regulation of GHGs under CAA section 111.

A. Statutory Authority Under CAA Section 111

CAA section 111 authorizes the EPA to list and regulate a category of stationary sources if the Administrator, “in his judgment,” finds that it “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”²³ The listing of a source category triggers the Agency’s authority to promulgate “standards of performance” for new sources and, under limited circumstances, to prescribe regulations under which States submit plans that establish standards of performance for existing sources.²⁴

1. Regulation of Emissions From New Sources

CAA section 111(b)(1)(A) authorizes the Administrator to publish, and from time-to-time revise, a list of categories of stationary sources that the Administrator, “in his judgment,” finds “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Once the EPA lists a source category under CAA section 111(b)(1)(A), the EPA must, under CAA section 111(b)(1)(B), establish “standards of performance” for “new sources” in the source category. These standards are referred to as new source performance standards, or NSPS. The NSPS are national requirements that apply directly to new sources within the relevant source category.

As discussed later in this section, Congress enacted the NSPS regulatory scheme to work together with the geography-based national ambient air quality standards (NAAQS) program in CAA sections 107–110. Similar to national emission standards for hazardous air pollutants (NESHAPs) that limit emissions of hazardous air pollutants (HAPs) listed and regulated

No. 19–1140, Order (D.C. Cir. Oct. 27, 2022). Nevertheless, as with the concurrently repealed aspects of the 2024 CPS, finalizing that the EPA lacks statutory authority to regulate GHG emissions from power plants in response to global climate change would necessarily contradict and invalidate any such findings or determinations in the 2015 CPP.

²³ 42 U.S.C. 7411(b)(1)(A).

²⁴ 42 U.S.C. 7411(b), (d).

under CAA section 112, NSPS under CAA section 111 apply to a new source regardless whether the area in which the new source is located is attaining the NAAQS (and therefore subject to limited NAAQS-related restrictions) or not attaining the NAAQS (and therefore subject to additional NAAQS-related restrictions). Accordingly, CAA section 111(a)(2) defines a “new source” as “any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section, which will be applicable to such source.”

CAA section 111(a)(1) defines “standard of performance” as “a standard for emissions of air pollutants” that must be promulgated or revised in a specified manner. When the EPA establishes or revises a standard of performance, CAA section 111(a)(1) provides that such standard must “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.” Thus, the term “standard of performance” as used in CAA section 111 makes clear that the foundation for the regulatory requirements for the source category is the EPA’s determination of the “best system of emission reduction” (BSER) that is “adequately demonstrated” for emissions of the relevant air pollutants.²⁵ The EPA has discretion in determining the BSER, and has historically followed a “technology-based approach” that focuses on “measures that improve the pollution performance of individual sources,” such as “add-on controls.”²⁶

After determining the BSER, the EPA derives the “degree of emission limitation achievable” through application of the BSER. A standard of performance is “achievable” if a technology can reasonably be projected to be available to an individual source at the time it is constructed so as to allow it to meet the standard.²⁷ The EPA must then, under CAA section 111(b)(1)(B), promulgate “standard[s] for emissions”—the NSPS—that reflect that level of stringency. The EPA may determine that different sets of sources

have different characteristics relevant for determining the BSER for emissions of the relevant air pollutants and may subcategorize sources accordingly.²⁸

2. Regulation of Emissions From Existing Sources

The EPA has generally used CAA section 111 to establish NSPS for emissions of specified air pollutants from new sources within a category. In the rare instances in which the new stationary source standards concern air pollutant emissions that are not regulated under the NAAQS program pursuant to CAA sections 108–110, or the NESHAP program pursuant to CAA section 112, the statute provides a separate authority for addressing such emissions from existing sources in the source category.²⁹

In contrast to the national regime for new sources under CAA section 111(b), CAA section 111(d) establishes a framework of “cooperative federalism for the regulation of existing sources.”³⁰ CAA section 111(d)(1) provides that when air pollutants covered by an NSPS for a source category are not already encompassed within the NAAQS program or NESHAP program, the EPA “shall prescribe regulations which shall establish a procedure similar to that provided by” CAA section 110 “under which each State shall submit to the Administrator” a plan for addressing emissions of such air pollutants by existing sources within such source category.³¹ Reference to CAA section 110 incorporates the statute’s provision for State submission and EPA review of state implementation plans (SIPs) that provide for the implementation, maintenance, and enforcement of the NAAQS for the areas within such State.³² In a comparable manner, State plans required by the regulations authorized in CAA section 111(d) must “establis[h] standards of performance for any existing source” for the air pollutant emissions at issue and “provid[e] for the implementation and

enforcement of such standards of performance.”

In the relatively few instances in which the EPA applies this provision, the Agency generally promulgates regulations, termed “emission guidelines,” that identify the BSER and the degree of emission limitation achievable through the application of the BSER. These regulations then require States to establish standards of performance for emissions of the air pollutant at issue by covered sources that reflect that level of stringency. Once the EPA approves a State’s plan, its provisions become federally enforceable in the same manner as the provisions of an approved SIP under the CAA.³³ If a State does not submit a plan or the EPA does not find a State’s submission “satisfactory,” the Agency is authorized to issue a Federal plan imposing standards of performance for the State’s existing sources.³⁴

B. Statutory and Regulatory History of CAA Section 111

Congress enacted CAA section 111 in the 1970 CAA Amendments as part of title I of Act, which “establishes three main regulatory programs to control air pollution from stationary sources such as power plants.”³⁵ In enacting CAA section 111 in 1970 and revising key language in the 1977 CAA Amendments and 1990 CAA Amendments, Congress addressed its requirements as part of a comprehensive scheme including the NAAQS program under CAA sections 107–110 and the NESHAP program under CAA section 112. This subsection discusses the statutory history of CAA section 111, the relation of CAA section 111 to the other provisions of title I, and regulatory history that reflects the EPA’s contemporary understanding of the statute as informed by Congress’s amendments to key statutory language.

1. 1970 CAA Amendments and Subsequent Regulations

Congress enacted CAA section 111 in 1970 as one of three related provisions directing the EPA to regulate emissions from stationary sources. The first—CAA sections 107 through 110—addressed what are commonly referred to as criteria pollutants, which are pollutants, “the presence of which in the ambient air results from numerous or diverse mobile or stationary sources” and are determined to have “an adverse effect on public health or welfare.”³⁶ Under

²⁸ 42 U.S.C. 7411(b)(2).

²⁹ 42 U.S.C. 7411(d)(1)(A)(i)–(ii); see *West Virginia*, 597 U.S. at 710 (“Section 111(d) thus ‘operates as a gap-filler,’ empowering EPA to regulate harmful emissions not already controlled under the Agency’s other authorities Reflecting the ancillary nature of Section 111(d), EPA has used it only a handful of times since the enactment of the statute in 1970.”).

³⁰ *Am. Lung Ass’n v. EPA*, 985 F.3d 914, 931 (D.C. Cir. 2021), *rev’d in part sub nom. West Virginia*, 597 U.S. 697.

³¹ 42 U.S.C. 7411(d)(1). CAA section 111(a)(6) defines an “existing source” as “any stationary source other than a new source.” 42 U.S.C. 7411(a)(6).

³² 42 U.S.C. 7410.

³³ 42 U.S.C. 7411(d)(2)(B).

³⁴ 42 U.S.C. 7411(d)(2)(A).

³⁵ *West Virginia*, 597 U.S. at 707.

³⁶ CAA Amendments of 1970, Public Law 91–604, 84 Stat. 1676, 1678. Congress subsequently

²⁵ *West Virginia*, 597 U.S. at 709.

²⁶ See *id.* at 727 (quoting the 2015 CPP).

²⁷ *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 391 (D.C. Cir. 1973).

these provisions, the Federal government would develop air quality criteria on the health and welfare impacts of criteria pollutants and promulgate numeric standards—the NAAQS—representing the ambient concentrations of such pollutants in the air of a particular area that are adequately protective. States would have primary responsibility for assuring air quality within their geographic area by developing and submitting SIPs for “implementation, maintenance, and enforcement” of the NAAQS to the Federal government for review and approval. These plans would include “emission limitations, schedules, and timetables for compliance . . . and such other measures as may be necessary to insure attainment and maintenance” of the NAAQS.³⁷

The second prong was CAA section 112, which addressed particularly dangerous pollutants—HAPs—through the establishment of NESHAPs at a level that “provides an ample margin of safety to protect the public health.”³⁸ All new or modified sources of any HAP would be required to meet these emission standards unless, for example, an existing source obtained a waiver or presidential exemption.

The third prong was CAA section 111, which addressed air pollutant emissions on a source category basis. Under CAA section 111(b), as enacted in 1970, the EPA would list source categories which “contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare” and then establish “standards of performance” for new sources in the listed category.³⁹ The relevant Committee Report explained that the provision would apply to “[m]ajor new facilities such as electric generating plants, kraft pulp mills, petroleum refineries, steel mills, primary smelting plants, and various other commercial and industrial operations” along with “any other categories of major stationary sources from which emissions would cause or contribute to endangerment of public health and welfare.”⁴⁰ The

legislation’s Senate sponsor, Senator Edmund Muskie, explained that CAA section 111 was designed to apply across the country to level the playing field among States, thereby avoiding “‘shopping around’ for open sites” in areas that were subject to fewer local restrictions under the NAAQS program.⁴¹ In this way, the national standards for new sources would reduce an incentive to shift operations from nonattainment areas required to improve air quality to attainment areas that already had acceptable air quality that should be maintained. For existing sources in a listed source category, CAA section 111(d) set out procedures for the establishment of federally enforceable “emission standards” of any pollutant not otherwise controlled under the CAA’s NAAQS provisions or CAA section 112.

These provisions grew out of different bills adopted by the House and Senate and reconciled by a conference committee to create what became CAA sections 107–112. The relevant committees and bill sponsors drafted these provisions to address contemporary air pollution problems causing or threatening harm through exposure at the local and regional level.⁴² These included the criteria pollutants addressed by what became CAA sections 107–110;⁴³ various “hazardous,”⁴⁴ “extremely hazardous”⁴⁵ or “extra-hazardous”⁴⁶ air pollutants, which were subject to what became CAA section 112; and “selected air pollution agents,” which could also be criteria pollutants and were subject to what became CAA section 111.⁴⁷ The Senate Report described the air pollutants subject to

committee to expect would be subject to the provisions of this section include” 19 industries, ranging from “[c]ement manufacturing” and “[c]oal cleaning operations” to “[m]unicipal incinerators” and “[s]team electric powerplants.” *Id.*

⁴¹ 91 Cong. Rec. 32902 (Sept. 21, 1970) (statement of Sen. Muskie, during the Senate debate on S. 4358).

⁴² See S. Rep. No. 91–1196, at 18 (1970) (describing the various sets of air pollutants subject to the stationary source provisions of the Senate bill).

⁴³ Prior to 1970, the Secretary of Health, Education, and Welfare issued air quality criteria under an earlier version of the CAA for SO₂, PM, CO, ozone (photochemical oxidants), and hydrocarbons. See, e.g., 36 FR 1502 (Jan. 30, 1971) (citing 35 FR 4768 and 34 FR 1988). Congress anticipated that these pollutants, along with certain precursors, would be the foundation of the NAAQS program for criteria pollutants under CAA sections 107–110. See, e.g., 91 Cong. Rec. 32902 (Sept. 21, 1970) (Exhibit II to statement of Sen. Boggs during the Senate debate on S. 4358).

⁴⁴ S. 4358, 91st Cong. section 6 (1970).

⁴⁵ H.R. 17255, 91st Cong. section 5 (1970).

⁴⁶ H.R. Rep. No. 1146, at 3 (1970).

⁴⁷ S. Rep. No. 91–1196, at 93–94 (1970).

the language later adopted at conference as CAA section 111 as “agents which are not emitted in such quantities or are not of such a character as to be widely present or readily detectable on a continuous basis with available technology in the ambient air” and specified that “[t]he presence of these agents is generally confined, at least for detection purposes, to the area of the emission source.”⁴⁸ The Senate Report further specified that “[t]he information available at this time indicates that the following list of substances are most likely to be considered as the agents to be covered under this section: Arsenic, chlorine gas, hydrogen chloride, copper, manganese, nickel, vanadium, zinc, barium, boron, chromium, selenium, pesticides, [and] radioactive substances.”⁴⁹

In response to the 1970 CAA Amendments, the EPA began listing source categories under CAA section 111(b)(1)(A) and promulgating standards of performance under CAA section 111(b)(1)(B). Between 1970 and 1977, the EPA listed at least 31 source categories in brief notices that did not solicit public comment.⁵⁰ In 1975, EPA published regulations that established the process for promulgating standards of performance for new sources and emission guidelines for existing sources⁵¹ and established requirements for modified and reconstructed sources.⁵² By 1977, the EPA generally proposed standards of performance for a source category at the same time as the listing and discussed the basis for the listing in the preamble to the proposed standards, including the amount of emissions of relevant air pollutants from the source category.⁵³

2. 1977 CAA Amendments and Subsequent Regulations

Congress revisited the CAA in 1977 to address growing concerns related to the energy and environmental impacts of the 1973 oil embargo and resolve issues associated with implementing the statutory programs enacted in 1970.⁵⁴ The EPA advised relevant committees at

⁴⁸ S. Rep. No. 91–1196, at 18 (1970).

⁴⁹ *Id.*

⁵⁰ See, e.g., 36 FR 5931 (Mar. 31, 1971) (first five source categories, including steam-fired EGUs); 42 FR 22510 (May 3, 1977) (listing lime manufacturing).

⁵¹ 40 FR 53340 (Nov. 17, 1975).

⁵² 40 FR 58416 (Dec. 16, 1975).

⁵³ See, e.g., 42 FR 22510 (May 3, 1977) (listing lime manufacturing); 42 FR 22506 (May 3, 1977) (proposing standards for lime manufacturing and explaining that “[l]ime manufacturing plants have been shown to be a significant source of particulate matter emissions”).

⁵⁴ CAA Amendments of 1977, Public Law 95–95, 91 Stat. 685.

amended the “adverse effect” criterion in CAA section 108(a)(1)(A) to refer to pollutants “which may reasonably be anticipated to endanger public health or welfare,” 42 U.S.C. 7408(a)(1)(A), and deliberately added identical phrasing to statutory provisions granting the EPA authority to regulate particular sources under certain conditions, see, e.g., 42 U.S.C. 7411(b)(1)(A) (stationary sources), 7521(a)(1) (new motor vehicles and new motor vehicle engines).

³⁷ CAA Amendments of 1970, 84 Stat. at 1680.

³⁸ *Id.* at 1685.

³⁹ *Id.* at 1684.

⁴⁰ S. Rep. No. 91–1196, at 16 (1970). The Committee Report added “New stationary sources which the administration has advised the

the time that increased coal combustion to generate power in response to the oil crisis meant that “vigorous and effective control” of air emissions was “even more urgent.”⁵⁵ Congress responded by adding new statutory provisions setting out the prevention of significant deterioration (PSD) program, visibility protections known as the regional haze program, and additional requirements for nonattainment areas under the NAAQS program. As with the 1970 CAA Amendments, the provisions added in the 1977 CAA Amendments required further steps to combat air pollution by reducing emissions of criteria pollutants and other air pollutants that cause or threaten adverse impacts from local or regional exposure.⁵⁶

Congress further amended the endangerment and contribution language in CAA section 111, CAA section 202(a)(1), and additional regulatory provisions to provide a comparable standard for invoking each regulatory authority. As amended in 1977, CAA section 111(b)(1)(A) read as it currently does: the Administrator “shall include a category of sources in such list if in his judgment it causes, or contributes significantly, to air pollution which may reasonably be anticipated to endanger public health or welfare.”⁵⁷ The House Report for the relevant bill language explained that these related amendments were designed to provide “the same standard of proof for regulation of any air pollutant, whether that pollutant comes from stationary or mobile sources, or both” that allowed

for precautionary regulation, consistent with the D.C. Circuit’s en banc decision in *Ethyl Corp. v. EPA*, 541 F.2d 1 (D.C. Cir. 1976).⁵⁸

Congress also enacted further amendments specific to CAA section 111. First, it amended the definition of “standard of performance” in CAA section 111 to require “all new sources to meet emission standards based on the reductions achievable through the use of the ‘best technological system of continuous emission reduction.’”⁵⁹ Second, for fossil fuel-fired stationary sources, Congress required a percentage reduction in emissions from the use of fuels.⁶⁰ Together, this was designed to “force new sources to burn high-sulfur fuel thus freeing low-sulfur fuel for use in existing sources where it is harder to control emissions and where low-sulfur fuel is needed for compliance.”⁶¹ This change responded to the oil shortage, the resulting energy legislation that restricted power plant use of oil or gas to generate electricity, and the consequent increase in coal combustion by power plants. This increase in coal combustion gave rise to the need to limit low-sulfur coal to existing power plants.⁶² Third, Congress added CAA section 111(f), which required the EPA

to list categories of major stationary sources not already listed and imposed a schedule for establishing standards of performance for those source categories. Finally, Congress added CAA section 111(f)(4), which specifically allowed States to petition the Administrator for new or revised (and more stringent) standards.⁶⁴

The EPA responded to the 1977 CAA Amendments by increasing the pace of stationary source regulation. Consistent with CAA section 111(f), the Agency promulgated a list of 59 source categories in 1979 with each assigned a priority for action.⁶⁵ The EPA based the list on the source categories’ emissions of nine air pollutants: volatile organic compounds (VOC), nitrogen oxides (NO_x), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), lead, fluorides, acid mist, and hydrogen sulfide.⁶⁶ The EPA proceeded to promulgate standards of performance for these air pollutants applicable to new sources in the listed categories.⁶⁷

3. 1990 CAA Amendments and Subsequent Regulations

In the 1990 CAA Amendments, Congress overhauled the CAA by strengthening the NAAQS program, thoroughly revising CAA section 112, and adding several new titles to the Act to address emerging problems not adequately encompassed within the design of title I for regulating stationary sources.⁶⁸ The newly enacted title IV addressed acid rain, which forms when SO₂ and NO_x emissions transform in the atmosphere and return to the earth as precipitation, by requiring the EPA to impose strict limits on SO₂ emissions from existing power plants and other sources. The newly enacted title V established a consolidated permitting program for certain stationary sources intended to improve efficiency, compliance, and enforceability of existing permitting and emission requirements. And the newly enacted title VI provided the EPA with new regulatory authorities and obligations to phase out certain ozone depleting substances in response to rising concerns that anthropogenic emissions were contributing to a global weakening of the stratospheric ozone layer’s capacity to deflect radiation from the sun associated with skin cancer and

⁵⁵ See Senate Hearings on S. 272, S. 273, S. 977, and S. 1469 (1977), reprinted in Library of Congress, 5 *A Legislative History of the Clean Air Amendments of 1977* (“1977 CAA Legis. Hist.”) at 3532 (statement of Administrator Costle).

⁵⁶ For example, Congress recognized that many air pollutants had not been regulated despite “mounting evidence” that these pollutants “are associated with serious health hazards.” H.R. Rep. No. 94–1175, at 22 (1976). Because the EPA “failed to promulgate regulations to institute adequate control measures,” Congress directed the EPA to regulate four specific pollutants that had “been found to be cancer-causing or cancer-promoting.” *Id.* at 23. This directive, reflected in CAA section 122, specifically added radioactive pollutants, cadmium, arsenic, and polycyclic organic matter “under the various provisions of the Clean Air Act and allows their regulation as criteria pollutants under ambient air quality standards, as hazardous air pollutants, or under new source performance standards, as appropriate.” H.R. Rep. No. 95–564, at 142 (1977); 42 U.S.C. 7422(a).

⁵⁷ CAA Amendments of 1977, section 109(a), 91 Stat. at 791; compare 42 U.S.C. 7411(b)(1)(A), with 42 U.S.C. 7521(a)(1) (the Administrator “shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare”).

⁵⁸ H.R. Rep. No. 95–294 at 43 (1977). The House Report further explained that the language eventually enacted set out “a standardized basis for future rulemakings” and the “same basic formula” in CAA sections 108 (defining criteria for NAAQS), 111 (NSPS), 112 (HAP, “although the nature of risk must be more serious”), 202 (new motor vehicle emission standards), 211 (regulation of fuels and fuel additives), and 231 (aircraft emission standards). *Id.* at 50.

⁵⁹ *Id.* at 192. Congress separately defined “technological system of continuous emission reduction” as “(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or (B) technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.” CAA Amendments of 1977, 91 Stat. at 700; see 42 U.S.C. 7411(a)(7).

⁶⁰ CAA Amendments of 1977, 91 Stat. at 700.

⁶¹ 44 FR 33580, 33581–82 (June 11, 1979) (promulgating NSPS for electric utility steam generating units).

⁶² H.R. Rep. No. 95–294, at 185–86, 188–89, 190–93.

⁶³ Congress also amended CAA section 111(b)(1)(B) to require the Administrator to periodically review and, if appropriate, revise new source standards of performance; further amended the definition of a standard of performance in section 111(a)(1) to require the consideration of “nonair quality health and environmental impact and energy requirements,” along with cost; amended CAA section 111(d) to require States to promulgate “standards of performance,” as defined under 111(a)(1), in lieu of “emission standards” and to clarify that States could consider “the remaining useful life” of a source when applying a standard of performance to a particular existing source; and added CAA section 111(h), which authorized alternative standards in limited circumstances. CAA Amendments of 1977, 91 Stat. at 699–700.

⁶⁴ *Id.* at 697.

⁶⁵ 44 FR 49225–26 (Aug. 21, 1979).

⁶⁶ 44 FR 49222 (Aug. 21, 1979).

⁶⁷ See, e.g., 50 FR 26122 (June 24, 1985) (promulgating NSPS for SO₂ emissions from natural gas processing plants).

⁶⁸ CAA Amendments of 1990, Public Law 101–549, 104 Stat. 2399.

other adverse health and environmental impacts worldwide.

Congress also made several further changes to CAA section 111. For the CAA section 111(a)(1) definition of “standard of performance,” Congress repealed the percentage reduction requirement added in the 1977 CAA Amendments, which had come to be understood as unduly restrictive, and returned the definition to how it read after the 1970 CAA Amendments while retaining the 1977 language providing that the EPA must consider nonair quality environmental impacts and energy requirements.⁶⁹ In connection with the newly enacted title IV, Congress directed the EPA to revise its NSPS for SO₂ emissions from fossil fuel-fired power plants and required the revised standards to be at least as stringent as earlier regulations.⁷⁰ And Congress revised CAA section 111(f) to update the schedule for regulating listed source categories according to a prioritization scheme that reinforced the provision’s design: establishing national minimum standards for emitting sources that may shift over time from one area of the country to another.⁷¹

In response to the 1990 CAA Amendments, the EPA began implementing the new programs in title IV, title V, and title VI, continued to promulgate standards of performance for new sources in listed source categories under CAA section 111(b), and, in limited instances, promulgated regulations addressing existing-source emissions under CAA section 111(d).

C. Regulation of Greenhouse Gases Under CAA Section 111

1. The EPA’s Historical Approach to CAA Section 111

During the first four decades of regulatory activity under CAA section 111 and related provisions, the EPA listed and regulated source categories to address air pollution with adverse impacts from local and regional exposure and never attempted to list or regulate in response to global climate change concerns. In the limited instances in which the Agency addressed emissions of what have since

been labeled GHGs, the justifications for and requirements of the regulatory action were based on such local and regional impacts. For example, in 1996, we listed the municipal solid waste (MSW) landfills source category primarily to regulate nonmethane organic compound (NMOC) emissions but also included limited requirements for methane emissions.⁷² In the 1991 proposal, we explained that there is a “well-documented danger of fires and explosions, both on- and off-site” from methane emitted from MSW landfills.⁷³ After surveying multiple additional bases for regulating methane and other emissions from that source category, we also noted that “[a]n ancillary benefit from regulating air emissions from MSW landfills is a reduction in the contribution of MSW landfill emissions to global emissions of methane,”⁷⁴ and that methane was “under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, convened by the United Nations.”⁷⁵ The 1996 final rule further discussed these issues,⁷⁶ again making it clear that our justification for listing the MSW landfill source category and regulating landfill gases was not contingent on global climate change concerns.⁷⁷

In 2003, the EPA expressly took the position that CAA section 202(a)(1) did not authorize the Agency to regulate GHG emissions in response to global climate change concerns in denying 1999 petitions for rulemaking on mobile-source emissions of CO₂, methane, N₂O, and HFCs. 68 FR 52922 (Sept. 8, 2003) (“2003 Denial”). In the 2003 Denial, the EPA asserted three primary reasons for denying the petitions. First, after “examin[ing] the fundamental issue of whether the CAA authorizes the imposition of control requirements” to “reduce the risk of global climate change,” we concluded that “CO₂ and other GHGs cannot be considered ‘air pollutants’ subject to the CAA’s regulatory provisions for any contribution they may make to global climate change.” 68 FR 52925. Citing

the Supreme Court’s decision in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), we noted that the CAA does not address GHGs as a regulatory matter, including in then-recent amendments, and that the “EPA has used these provisions to address air pollution problems that occur primarily at ground level or near the surface of the earth.” 68 FR 52926. On this basis, we concluded that GHGs “are not air pollutants under the CAA’s regulatory provisions, including sections 108, 109, 111, 112, and 202” because they categorically are not “air pollutant[s]” under the Act-wide definition in CAA section 302(g). 68 FR 52928.

Second, we raised several policy reasons for declining to regulate GHG emissions, including that regulating GHG emissions from motor vehicles and engines under the CAA would interfere with the National Highway Traffic Safety Administration’s authority to implement fuel economy standards. 68 FR 52929. We also asserted that regulating GHG emissions from motor vehicles and engines under the CAA would undermine then-President Bush’s policy approach of addressing global climate change concerns multilaterally. 68 FR 52930–31. That is, we reasoned that establishing GHG emission standards through unilateral action would “result in an inefficient, piecemeal approach to addressing the climate change issue” because “all significant sources and sinks of GHG emissions” should be considered in deciding the best way to achieve emission reductions. 68 FR 52931.

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court narrowly reversed the D.C. Circuit’s decision upholding the EPA’s denial of the 1999 petitions for rulemaking.⁷⁸ The Court took particular issue with the EPA’s reading of the Act-wide definition in CAA section 302(g), ruling that “[t]he Clean Air Act’s sweeping definition of ‘air pollutant’ . . . embraces all airborne compounds of whatever stripe” and provided no textual basis for excluding CO₂ or the three other GHGs raised in the petitions for rulemaking. 549 U.S. at 528–29. The Court also addressed the EPA’s reliance on *Brown & Williamson*, which the majority construed as having found no congressional intent to ban the

⁶⁹ Congress designed this repeal to apply only so long as the SO₂ cap in the newly established acid rain program of title IV remained in effect. CAA Amendments of 1990, 104 Stat. at 2631.

⁷⁰ *Id.*

⁷¹ See *id.* at 2467. Specifically, Congress instructed the EPA to prioritize regulation based the quantity of a source category’s emissions, the extent to which each emitted pollutant may endanger public health or welfare, and “the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.” 42 U.S.C. 7411(f)(2).

⁷² 61 FR 9905 (Mar. 12, 1996).

⁷³ 56 FR 24468, 24474 (May 30, 1991).

⁷⁴ *Id.*

⁷⁵ *Id.* at 24473.

⁷⁶ See, e.g., 61 FR at 9906 (Mar. 12, 1996).

⁷⁷ See *id.* (analyzing the health and welfare impacts of local and regional exposure to landfill gas emissions that constitute the basis for listing and regulating the source category, as well as discussing methane’s role as a GHG); see also *id.* at 9914, 9916, 9917 (explaining that the methane-related requirements function in part to response to the EPA’s obligations under President Clinton’s 1993 “Climate Change Action Plan” and repeating that global climate change benefits are “[a]n ancillary benefit” of the regulation).

⁷⁸ The D.C. Circuit majority had upheld the denial on the merits because “the EPA Administrator properly exercised his discretion under section 202(a)(1) in denying the petition for rulemaking.” *Massachusetts v. EPA*, 415 F.3d 50, 58 (D.C. Cir. 2005). The dissent argued that CAA section 202(a)’s breadth provided the EPA sufficient authority to regulate GHGs, that more specific authorization was not required, and that the Agency’s policy justifications were inadequate reasons to deny the petitions. *Id.* at 67–82 (Tatel, J., dissenting).

sale of tobacco products outright because such an application of the relevant statute would have been highly unlikely given the Food and Drug Administration (FDA)'s refusal to assert such authority in the past. *Id.* at 530–31. In contrast, in *Massachusetts*, the Court found that the CAA did not reflect a congressional intent to categorically exclude GHGs from the “sweeping definition of ‘air pollutant’” and, citing several EPA memoranda, that we had not similarly foresworn all authority to regulate GHGs as a categorical matter. *Id.* at 528, 530–31. Notably, the Court expressly declined to decide whether the EPA was required to issue an endangerment finding as to GHG emissions under the standard set out in CAA section 202(a)(1). *Id.* at 534 (“We need not and do not reach the question whether on remand EPA must make an endangerment finding.”). Nor did the Court address “whether policy concerns can inform EPA’s actions in the event that it makes such a finding.” *Id.* at 534–35. Rather, the Court emphasized that the scope of its review of the denial of a rulemaking petition was “extremely limited,” *id.* at 527–28 (citation omitted), and held that we must respond to the petitions by deciding whether GHG emissions from new motor vehicles and engines meet the standard for regulation in CAA section 202(a)(1) or whether the science was too uncertain to make any determination, and that, in doing so, we must “ground [our] reasons for action or inaction in the statute,” *id.* at 535.⁷⁹

The EPA responded in 2008 by issuing an advanced notice of proposed rulemaking titled “Regulating Greenhouse Gas Emissions Under the Clean Air Act,” 73 FR 44354 (July 30, 2008) (“2008 ANPRM”), which analyzed the extent to which various CAA provisions could address GHGs. The Agency noted that the CAA was not specifically designed to address GHGs, 73 FR 44397, and that the Agency had traditionally used its air pollution authorities to address local and regional problems, 73 FR 44408. The EPA further noted that CAA section 111 provided significant discretion over which

stationary sources should be regulated and in determining the appropriate technologies and costs. 73 FR 44486–93.

The EPA subsequently retained this position in implementing CAA section 111. In June 2008, the EPA promulgated revised standards of performance for petroleum refineries, including NO_x standards for certain types of facilities.⁸⁰ In response to comments asserting that the EPA was required to promulgate standards for CO₂ and methane emissions because they contribute significantly to dangerous air pollution, we stated that “it is reasonable for EPA not to promulgate performance standards for GHG emissions as part of this 8-year review cycle” because “we believe that the nature of GHG emissions renders them readily distinguishable from other air pollutants for which we have previously promulgated new performance standards concurrent with an 8-year review of the existing standards.”⁸¹ We further stated that “[i]ndeed, GHG emissions present issues that we have never had to address in the context of even an initial NSPS rulemaking for a source category,” and that “[t]hese differences warrant proceeding initially through a more deliberate process, *i.e.*, the announced [2008 ANPRM], than in this source category-specific rulemaking.”⁸²

2. Developments Between 2009 and 2015

In 2009, following a change in administration, the EPA adopted a new position on its authority to regulate in response to global climate change concerns under CAA section 202(a)(1). President Obama and the Administrator at the time initially urged Congress to amend the Act to provide additional statutory authority. As discussed later in this section, Congress considered legislation that would have added a new title to the Act specific to GHGs and global climate change, similar to the approach taken in the 1990 CAA Amendments with respect to title IV’s acid rain program and title VI’s provisions for phasing out ozone-depleting substances. When this legislation stalled, however, the EPA finalized a new interpretation of its existing authority under CAA section 202(a)(1) in the 2009 Endangerment Finding.

In the 2009 Endangerment Finding, the Administrator found that “the science [was] sufficiently certain” to compel a determination and interpreted

Massachusetts as “allow[ing] for the consideration only of science.” 74 FR 66501. The Administrator interpreted *Massachusetts* as holding not only that “GHGs fall within the definition of ‘air pollutant’ under the CAA,” but also as standing for the proposition “that EPA may regulate GHGs if required findings were made.” EF RTC 11:5. The EPA based the endangerment determination on the Intergovernmental Panel on Climate Change’s (IPCC) Assessment Report 4 projections concerning global mean surface temperature and linked that warming to indirect health risks driven by, among other things, more frequent heat waves, air quality effects and extreme weather events, 74 FR 66525, as well as welfare effects related to global sea level rise, and other downstream impacts, including, among other things, food production and agriculture and water resources, 74 FR 66531–35.⁸³ Importantly, the Administrator acknowledged that the understanding of public health and welfare in the Endangerment Finding was atypical, particularly with respect to considering indirect effects and because “[n]one of th[e] human health effects are associated with direct exposure to [GHGs],” but asserted the approach was necessary given the “unique” challenge presented by global climate change. 74 FR 66527. The EPA subsequently issued GHG standards for multiple new motor vehicle and engine categories under CAA section 202(a)(1) and attempted to expand its regulatory program to stationary sources by establishing GHG emission thresholds for stationary source permitting under the PSD program and title V.⁸⁴

The EPA did not immediately apply the new legal interpretation developed in the 2009 Endangerment Finding with respect to CAA section 202(a)(1) to CAA section 111. In October 2009, for example, we promulgated NSPS for SO₂, NO_x, and CO from the coal preparation and processing plants source category for the first time.⁸⁵ Commenters again argued that we were required to, or at least should, regulate GHG emissions—CO₂, N₂O, and black carbon—from the

⁸³ The EPA acknowledged that the identified welfare impact pathways involved multiple causal steps, unlike more typical situations analyzed in the past. 74 FR 66531.

⁸⁴ Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs, 75 FR 17004 (Apr. 2, 2010) (“Triggering Rule”); Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 FR 31514 (June 3, 2010) (“Tailoring Rule”).

⁸⁵ 74 FR 51950 (Oct. 8, 2009). The EPA had listed the source category in 1974, 39 FR 37807 (Oct. 24, 1974), and regulated PM emissions from the source category in 1976, 39 FR 2232 (Jan. 15, 1976).

⁷⁹ Writing for four members of the Court, Chief Justice Roberts would have dismissed the petitions for review for lack of Article III standing. 549 U.S. at 535 (Roberts, C.J., joined by Scalia, Thomas, and Alito, J.J., dissenting). Writing for the same four members of the Court, Justice Scalia would have denied the petitions on the grounds that the Administrator reasonably exercised judgment in declining to regulate and that CAA section 302(g)’s definition of “air pollutant” does not clearly encompass CO₂ and other GHGs that naturally occur in the ambient air. *Id.* at 549 (Scalia, J., joined by Roberts, C.J., and Thomas and Alito, J.J., dissenting).

⁸⁰ 73 FR 35838, 35846 (June 24, 2008).

⁸¹ *Id.* at 35859.

⁸² *Id.*

source category to address global climate change concerns. We declined to regulate such emissions, stating: “At this time EPA is not aware of any emissions or mitigation data for the pollutants noted by the commenter for this source category. Hence, we lack sufficient information on which to base an NSPS for emissions of CO₂, N₂O, and black carbon from the source category at this time.”⁸⁶

Litigation by proponents of regulations seeking other avenues for controlling GHG emissions from power plants continued during this period. In *Connecticut v. American Electric Power Co.*, 582 F.3d 309 (2d Cir. 2009), the Second Circuit held (among other things) that litigants could seek pollution controls under the Federal common law because the EPA had not yet taken regulatory action with respect to GHG emissions from stationary sources.⁸⁷ The Supreme Court unanimously reversed this holding in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) (“*AEP*”).⁸⁸ In *AEP*, the Court found that CAA section 111, together with the Act’s avenues for enforcement, rulemaking petitions, and judicial review, “provides a means to seek limits on emissions of carbon dioxide from domestic powerplants—the same relief the plaintiffs seek by invoking federal common law.” *Id.* at 425. The Court held that the Act’s preclusive effect does not turn on whether the EPA actually exercises its regulatory authority: “The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants; the delegation is what displaces federal common law.” *Id.* at 426. Further, “were EPA to decline to regulate carbon-dioxide emissions altogether,” the courts “would have no warrant to employ the federal common law of nuisance to upset the Agency’s expert determination.” *Id.*

Separate litigation addressed aspects of the EPA’s GHG regulatory initiative without definitively resolving important questions regarding the scope of the

Agency’s statutory authority. In *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), the D.C. Circuit rejected certain challenges to the 2009 Endangerment Finding and the suite of rules promulgated under CAA section 202(a)(1) and the Act’s stationary source permitting provisions. Among other things, the court read *Massachusetts* as precluding us from declining to regulate for policy reasons that “were not part of the calculus” and, citing generally to the entirety of the opinion, as holding that the “EPA indeed wields the authority to regulate greenhouse gases under the CAA.” 684 F.3d at 118. Applying this reading, the court rejected petitioners’ arguments that we should have considered the “‘absurd’” results for stationary source permitting when issuing the 2009 Endangerment Finding. *Id.* The court understood the interpretation of the statutory definition of “air pollutant” in *Massachusetts* to apply anywhere that term is used in the substantive provisions of the CAA. *Id.* at 134–44. The court acknowledged that “nothing in the CAA requires regulation of a substance simply because it qualifies as an ‘air pollutant’ under this broad definition.” *Id.* at 135. Applying its broad understanding of *Massachusetts*, however, the court held that reading “air pollutant” as “any regulated air pollutant” was “compelled by the statute” and rejected petitioners’ arguments that the PSD provisions should be read in context as focusing on localized “air pollution” problems. *Id.* at 134, 138.⁸⁹

In *UARG*, the Supreme Court granted review of the D.C. Circuit’s decision in *Coalition* and revisited issues related to those it had addressed seven years earlier in *Massachusetts* and three years earlier in *AEP*. The Court disagreed with the D.C. Circuit’s reasoning and held that the EPA’s approach to extending PSD permitting to GHG emissions exceeded the Agency’s statutory authority. 573 U.S. at 316. The Court rejected the D.C. Circuit’s application of *Massachusetts* in this context as a “flawed syllogism,” *id.* at 319 (citation

omitted), holding that “while *Massachusetts* rejected EPA’s categorical contention that greenhouse gases *could not* be ‘air pollutants’ for any purposes of the Act, it did not embrace EPA’s current, equally categorical position that greenhouse gases *must* be air pollutants for all purposes regardless of the statutory context,” *id.* Rather, “*Massachusetts* does not foreclose the Agency’s use of statutory context to infer that certain of the Act’s provisions use ‘air pollutant’ to denote not every conceivable airborne substance, but only those that may sensibly be encompassed within the particular regulatory program.” *Id.* The Court rejected the EPA’s attempt to require a permit based on GHG emissions as “‘incompatible’ with ‘the substance of Congress’ regulatory scheme’” and contrary to the principle that “Congress . . . speak[s] clearly if it wishes to assign to an agency decisions of vast ‘economic and political significance.’” *Id.* at 322–24 (quoting *Brown & Williamson*, 529 U.S. at 159).

3. The EPA’s Regulation of GHGs Under CAA Section 111 Since 2015

In August 2015, the EPA announced “a historic and important first step in reducing carbon pollution from power plants.”⁹⁰ This “first step” consisted of two related final rules that, for the first time since 1970, regulated stationary source emissions in response to global climate change concerns. This watershed moment fundamentally changed what and how the EPA regulates under CAA section 111.

a. Regulation of CO₂ Emissions From Fossil Fuel-Fired Power Plants

i. 2015 NSPS for CO₂ Emissions From New Power Plants

In the 2015 NSPS, the EPA laid out a novel legal basis for regulating GHG emissions under CAA section 111 based on global climate change concerns. The EPA explained that CAA section 111(b)(1)(A) requires the Administrator to list any source category that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA posited that, unlike other CAA provisions, CAA section 111(b)(1)(A) does not require the EPA to make endangerment and significant contribution findings for individual pollutants. Rather, the EPA asserted that once such findings are made for *any* pollutant emitted by a source category, the Agency has discretion to regulate *all* pollutants emitted by the source

⁸⁶ 74 FR 51957–58.

⁸⁷ See 582 F.3d at 379–80 (“In sum, at least until EPA makes the requisite findings, for the purposes of our displacement analysis the CAA does not (1) regulate greenhouse gas emissions or (2) regulate such emissions from stationary sources. . . . We express no opinion at this time as to whether the actual regulation of greenhouse gas emissions under the CAA by EPA, if and when such regulation should come to pass, would displace Plaintiffs’ cause of action under the federal common law.”).

⁸⁸ The Supreme Court affirmed by an equally divided court the Second Circuit’s holding that plaintiffs had standing to maintain the lawsuit. See *AEP*, 564 U.S. at 420.

⁸⁹ The D.C. Circuit subsequently denied rehearing en banc. See *Coal. for Responsible Regulation v. EPA*, 2012 U.S. App. LEXIS 25997 (Dec. 20, 2012). Judge Brown dissented, arguing that the CAA was designed to address “the harmful effects of poisoned air on human beings and their local environs,” that such important policy decisions were for Congress to decide, and that the panel had overread “dicta” in *Massachusetts*. *Id.* at *29–62. Then-Judge Kavanaugh also dissented, arguing that the EPA exceeded its statutory authority in regulating GHG emissions under the PSD program by failing to read the term “air pollutant” in context and that the issue was “plainly one of exceptional importance” that Congress should decide. *Id.* at *62–93.

⁹⁰ <https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html>.

category subject only to rational basis constraints. 80 FR 64529–30.

Using this framework, the EPA created a new source category consisting of the type of power plants previously listed in the 1970s under several source categories. The source category encompassed all fossil fuel-fired EGUs and focused on CO₂ emissions on the understanding that subject power plants did not emit substantial quantities of the additional GHGs encompassed within the 2009 Endangerment Finding.⁹¹ The Agency maintained, however, that it was not listing a new source category and therefore was not required to make any endangerment or significant contribution finding for the fossil fuel-fired EGU source category to promulgate NSPS. The EPA determined that it had a rational basis for concluding that emissions of CO₂ from fossil fuel-fired power plants merit regulation under CAA section 111. In reaching that conclusion, the Agency stated that it had determined in the 2009 Endangerment Finding that GHG emissions may reasonably be anticipated to endanger public health or welfare and that more recent information confirmed this determination. The EPA explained that the approach it was taking to endangerment from GHG emissions from the fossil fuel-fired EGU source category was “substantially similar to that reflected in the 2009 Endangerment Finding and the 2010 denial of petitions to reconsider.” 80 FR 64531.⁹² The EPA added that “the high level of GHG emissions from fossil fuel-fired EGUs makes clear that it is rational for the EPA to regulate GHG emissions from this sector.” 80 FR 64530.

Nevertheless, the EPA purported to make separate endangerment and significant contribution findings in the alternative pursuant to CAA section 111(b)(1)(A). While maintaining that no pollutant-specific contribution findings were required, the EPA asserted that the information and conclusions in the preamble to the 2015 NSPS would suffice for such findings. 80 FR 64530–31. That is, the EPA took the position in the 2015 NSPS that regardless whether

the Agency needed only a rational basis to regulate CO₂ emissions from fossil fuel-fired EGUs or whether the Agency was instead required to make new endangerment and contribution findings, it had made the requisite determinations based on the 2009 Endangerment Finding and the additional information presented in the preamble to the 2015 NSPS.

The standards of performance in the 2015 NSPS limited CO₂ emissions based on several different BSER determinations. For new coal-fired steam boilers, the EPA based the standards on a BSER of 16 to 23 percent (depending on the type of coal combusted) carbon capture and storage (CCS). 80 FR 64548. For new natural gas-fired combustion turbines, the EPA based the standards on a BSER of efficiency measures. 80 FR 64515. The EPA subsequently denied multiple petitions for reconsideration,⁹³ and several States and industry groups filed petitions for review in the D.C. Circuit.⁹⁴

ii. Emission Guidelines for CO₂ From Existing Power Plants

(A) 2015 Clean Power Plan

In the 2015 CPP, issued the same day as the 2015 NSPS, the EPA promulgated emissions guidelines under CAA section 111(d) establishing presumptive standards of performance for existing fossil fuel-fired EGUs and requiring States to submit plans for implementation and enforcement. 80 FR 64661. The Agency asserted that its authority under CAA section 111(d) derived from the 2015 NSPS under CAA section 111(b) and noted that GHGs, and CO₂ in particular, are not separately regulated through the NAAQS program under CAA sections 107–110 or the NESHAP program under CAA section 112.

The Agency based the emission guidelines for existing coal-fired steam plants on a BSER that consisted of a set of measures, including heat-rate improvements (*i.e.*, the amount of fuel that must be burned to generate a unit of electricity) and substituting fossil fuel-based power generation with lower-emitting power generation, such as renewable sources. 80 FR 64667. The latter type of measure is known as “generation shifting.” 80 FR 64728–29. The emission guidelines authorized the States to include trading or averaging

programs in their State plans. 80 FR 64840. In February 2016, the Supreme Court stayed the 2015 CPP after the D.C. Circuit denied preliminary relief.⁹⁵

(B) 2019 ACE Rule and Clean Power Plan Repeal

In 2019, following a change in administration, the EPA repealed and replaced the 2015 CPP in the Affordable Clean Energy (ACE) Rule, 84 FR 32529 (July 8, 2019). In the 2019 ACE Rule, the Agency determined that the statutory “text and reasonable inferences from it” indicate that the best “system” of emission reduction as defined in CAA section 111(a)(1) “is limited to measures that can be applied to and at the level of the individual source,” meaning the BSER must be control measures for reducing emissions at individual sources. 84 FR 32523–24. The Agency concluded that generation shifting is not such a control measure. 84 FR 32546. In addition, the EPA concluded that the 2015 CPP was a “major rule” subject to the major questions doctrine and therefore must be supported by “a clear statement from Congress.” Because the statutory phrase “best system of emission reduction” does not clearly speak to generation shifting, the Agency reasoned that CAA section 111 should not be read to encompass generation-shifting measures. 84 FR 32529. To replace the 2015 CPP, the EPA promulgated as part of the 2019 ACE Rule a new set of emission guidelines for existing coal-fired steam-generating EGUs. 84 FR 32532.

In *American Lung Association*, a divided panel of the D.C. Circuit vacated the 2019 ACE Rule, including the CPP Repeal. First, the panel majority held that CAA section 111(d) does not limit the EPA, in determining the BSER, to measures applied at and to an individual source. 985 F.3d at 944. Second, the panel majority rejected in the strongest terms the argument that generation-shifting implicated “the so-called ‘major questions’ doctrine” based on its interpretation of the Supreme Court’s decisions in *Massachusetts* and *AEP*. *Id.* at 959. The panel majority reasoned that the EPA had “complied” with *Massachusetts* by issuing the 2009 Endangerment Finding and that in *AEP*, “the Court [] told the EPA directly that it is the Agency’s job to regulate power plants’ emissions of greenhouse gases under Section [111].” *Id.* at 959–60. Therefore, the panel majority concluded, all questions as to “what,”

⁹¹ Specifically, referencing the determination in the 2009 Endangerment Finding that GHGs constitute both the relevant “air pollutant” and “air pollution” for purposes of regulating in response to global climate change, the EPA stated in the 2015 NSPS that “[t]he air pollutant regulated in this final action is greenhouse gases. However, the standards in this rule are expressed in the form of limits on only emissions of CO₂, and not the other constituent gases of the air pollutant GHGs.” 80 FR 64537.

⁹² See 75 FR 49556 (Aug. 13, 2010) (denying petitions for reconsideration of the 2009 Endangerment Finding).

⁹³ 81 FR 27442 (May 6, 2016). The EPA deferred action on one petition with respect to the treatment of biomass. *Id.* at 27443.

⁹⁴ *North Dakota v. EPA*, No. 15–1381 (D.C. Cir.). These petitions have been held in abeyance since 2016 given intervening developments.

⁹⁵ *West Virginia v. EPA*, 577 U.S. 1126 (2016). The D.C. Circuit held the litigation in abeyance and later dismissed in light of subsequent developments. See *Am. Lung Ass’n*, 985 F.3d at 937.

“whom,” and “how” the Agency may regulate “have all been resolved and so do not trigger the major questions doctrine.” *Id.* at 962.⁹⁶ Finally, the panel majority rejected certain additional challenges to the findings (or lack thereof) supporting the 2015 NSPS and therefore the 2015 CPP as well as arguments that coal power plants could not be regulated under CAA section 111(d) given the EPA’s regulation of mercury emissions from coal plants under CAA section 112. *Id.* at 971–88. Ultimately the panel majority vacated the 2019 ACE Rule, including the CPP Repeal, thereby placing the 2015 CPP back into effect.⁹⁷

In *West Virginia*, the Supreme Court reversed the D.C. Circuit’s treatment of the major questions doctrine and held that the 2015 CPP exceeded the EPA’s authority under CAA section 111(d). First, the Court surveyed its precedents to confirm that an agency must have more than “a colorable textual basis” to assert “‘unheralded’ regulatory power over ‘a significant portion of the American economy.’” 597 U.S. at 721–23 (quoting *UARG*, 573 U.S. at 324). In such cases, “both separation of power principles and a practical understanding of legislative intent” require the agency to “point to ‘clear congressional authorization’ for the power it claims.” *Id.* at 723 (quoting *UARG*, 573 U.S. at 324). The Court explained that its decision in *UARG* “addressed another question regarding EPA’s authority—namely, whether EPA could construe the term ‘air pollutant,’ in a specific provision of the Clean Air Act, to cover greenhouse gases,” and held that despite the “textual plausibility” of the interpretation supporting the Agency’s assertion of authority, the significant consequences involved required more than a “plausib[le]” statutory basis. *Id.* at 722. Next, the Court held that our reliance on CAA section 111(d) to regulate GHG emissions was “a major questions case” because we had asserted the power “to substantially restructure the American energy market.” *Id.* at 724. That provision “had rarely been used in

the preceding decades,” and we had used it in an “unprecedented” manner “to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself.” *Id.* at 724–28. The Court specifically rejected the argument that *AEP* precluded application of the major questions doctrine, stating that the case involved the question “whether Congress wanted district court judges to decide, under unwritten federal nuisance law, ‘whether and how to regulate carbon dioxide emissions from powerplants’” and “said nothing about the ways in which Congress intended EPA to exercise its power under that provision.” *Id.* at 730 (quoting *AEP*, 564 U.S. at 426). Finally, the Court concluded that we lacked statutory authority for the 2015 CPP based on a lack of statutory authorization to require generation shifting. *Id.* at 732–35.⁹⁸

In October 2022, the D.C. Circuit recalled its mandate for the vacatur of the 2019 ACE Rule, revised its judgment to place the CPP Repeal back into effect, and stayed further proceedings. *Am. Lung Ass’n v. EPA*, No. 19–1140, Order (Oct. 27, 2022).

(C) 2024 Carbon Pollution Standards Rule

In May 2024, the EPA responded to the Supreme Court’s decision in *West Virginia* by promulgating more stringent requirements for fossil fuel-fired EGUs than those contained in the 2015 NSPS or vacated 2015 CPP. 89 FR 39798. The 2024 CPS included several related components. First, the EPA repealed the 2019 ACE Rule (aside from its repeal of the 2015 CPP) after determining that the BSER for existing coal-fired power plants was not the suite of heat-rate improvements identified in the 2019 ACE Rule. Second, the EPA promulgated new emission guidelines for GHG emissions from existing fossil fuel-fired power plants subcategorized into coal-fired units, oil-fired units, and gas-fired units. For existing coal-fired units, the EPA based the requirements on a new BSER of either 90 percent CCS or 40 percent gas cofiring. For existing natural gas- and oil-fired steam generating units, the EPA based the requirements on BSERs of either routine methods of operation and maintenance or uniform fuels. Finally, the Agency

promulgated NSPS for new and reconstructed combustion turbines, based on efficiency measures, 90 percent CCS, or use of lower-emitting fuels. In addition, the EPA revised the standards of performance for coal-fired steam generating units that undertake a large modification to be based on the BSER of 90 percent CCS.⁹⁹

Following promulgation of the 2024 CPS, States and industry groups filed petitions for review in the D.C. Circuit, and many subsequently filed motions to stay the rule. The D.C. Circuit denied the stay motions on July 19, 2024,¹⁰⁰ and the Supreme Court denied them on October 16, 2024.¹⁰¹ These challenges have been held in abeyance since the change in administration.

D. Recent Developments

1. Rescission of the 2009 Endangerment Finding

In February 2025, the Administrator initiated reconsideration of the 2009 findings of endangerment and contribution under CAA section 202(a)(1) that launched the EPA’s GHG regulatory initiative across multiple statutory programs. The Administrator explained that the Agency would address legal and scientific developments that presented reason to question the ongoing validity and reliability of the conclusions in the 2009 Endangerment Finding and to seek public comment on these important issues for the first time since 2009.¹⁰² These efforts culminated in a proposed rule issued on July 29, 2025,¹⁰³ followed by a public comment period in which we received hundreds of thousands of comments from a variety of perspectives.

On February 12, 2026, the Administrator signed a final rule rescinding the 2009 Endangerment Finding and repealing all associated GHG emission standards for new motor vehicles and engines under CAA section 202(a)(1).¹⁰⁴ The EPA concluded in the Endangerment Finding Rescission that we lack statutory authority to regulate GHG emissions from new motor

⁹⁶ The panel majority further held that the major questions doctrine “does not apply” to the interpretation of “best system of emission reduction” because, among other reasons, “the regulatory authority and its reach have been affirmed and enforced by the Supreme Court” and generation shifting was an “already-in-use” system. 985 F.3d at 963–68.

⁹⁷ In a partial dissent, Judge Walker argued that the 2015 CPP (and aspects retained in the 2019 ACE Rule) violated the major questions doctrine because CAA section 111 does not include a clear statement of authority to regulate GHG emissions from power plants. *Id.* at 995–1003 (pointing to failed legislation in 2009 that would have provided the requisite authority to regulate GHG emissions from power plants).

⁹⁸ In dissent, Justice Kagan argued that the Court had obstructed the EPA’s efforts to regulate GHG emissions: “Today, the Court strips the [EPA] of the power Congress gave it to respond to ‘the most pressing environmental challenge of our time.’” *West Virginia*, 597 U.S. at 753 (Kagan, J., joined by Breyer and Sotomayor, J.J., dissenting) (quoting *Massachusetts*, 549 U.S. at 505); see also *id.* at 755 (“This Court has obstructed EPA’s effort from the beginning.”).

⁹⁹ In the 2024 CPS, the EPA also withdrew the separate proposed revisions to the New Source Review (NSR) regulations that were included the ACE Rule proposal (see 83 FR 44746, 44773–83 (Aug. 31, 2018)).

¹⁰⁰ *West Virginia v. EPA*, No. 2420, Order, 2024 U.S. App. LEXIS 17856 (July 19, 2024).

¹⁰¹ *West Virginia v. EPA*, 145 S. Ct. 2 (2024). Justice Thomas would have granted a stay, and Justice Kavanaugh, joined by Justice Gorsuch, wrote separately that “the applicants have shown a strong likelihood of success on the merits as to at least some of their challenges to the [EPA’s] rule.” *Id.*

¹⁰² See Feb. 19, 2025 Memo at 1.

¹⁰³ See 90 FR 36288 (Aug. 1, 2025).

¹⁰⁴ See 91 FR 7586 (Feb. 18, 2026).

vehicles and motor vehicle engines based on global climate change concerns. We further concluded that the appropriate policy response to global climate change concerns is a decision vested in Congress, and that Congress did not give the EPA the authority to decide the Nation's policy response to these concerns when it enacted CAA section 202(a)(1) to address domestic air pollution problems. And we concluded, based on an analysis of commonly accepted climate impact modeling, including models and arguments received from multiple perspectives during the public comment period, that the inability of GHG emission standards for new motor vehicles and engines to have more than a de minimis impact on phenomena attributed to global climate changes rendered the standards futile.¹⁰⁵

2. Proposed Repeal of GHG Standards for Fossil Fuel-Fired EGUs

On June 17, 2025, the EPA issued a proposed rule to repeal GHG standards for fossil fuel-fired EGUs. The June 2025 NPRM included a primary proposal, which would repeal all such GHG standards, and an alternative proposal, which would repeal most of the GHG standards promulgated in the 2024 CPS. This subsection summarizes the June 2025 NPRM for informational purposes only; as noted above, the EPA is not soliciting additional comment on issues addressed in the concurrently issued final rule based on the alternative proposal in the June 2025 NPRM and will address comments received on the primary proposal in the June 2025 NPRM in a final action addressing that proposal and this supplemental proposal.

The primary proposal in the June 2025 NPRM proposed to conclude that CAA section 111 is best read to require, or at least authorize the EPA to require, an Administrator's determination that an air pollutant emitted by a source category causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare as a predicate to establishing emission standards for that pollutant. As such, we proposed to conclude that the Administrator must make a significant contribution finding before issuing GHG emission standards for a new source category even if

covered sources had previously been listed under a distinct category. We further proposed to determine, in a change from the 2015 NSPS and 2024 CPS, that GHG emissions from fossil fuel-fired EGUs do not contribute significantly to air pollution as required for the promulgation of new and existing source standards. We proposed that a determination of significant contribution must consider whether such determination would have an influence or effect on the targeted air pollution and the public health or welfare impacts attributed to such air pollution, and that this inquiry entails considering the policies that would inform the resulting regulation. Based on this understanding, we proposed to find that regulation of GHG emissions from fossil fuel-fired EGUs under CAA section 111 would not have a significant effect on GHG air pollution and the public health or welfare impacts attributed to such air pollution, and that the contribution of this source category is therefore not significant for a host of reasons. The EPA thus proposed to repeal all GHG emissions standards for the power sector under CAA section 111, including the 2015 NSPS, codified in 40 CFR part 60, subpart TTTT, and the 2024 CPS, codified in 40 CFR part 60, subparts TTTTa and UUUUb.

The alternative proposal in the June 2025 NPRM proposed to reconsider the BSER determinations in the 2024 CPS through a record-based evaluation and in light of applicable requirements for determining an appropriate BSER. The EPA proposed to rescind the requirements for existing coal-fired units on grounds that 90 percent CCS and 40 percent natural gas co-firing do not qualify as the BSER for existing coal-fired units. The EPA is finalizing that proposal concurrently with this supplemental proposal. The EPA is not taking further action at this time on the primary proposal in the June 2025 NPRM and will consider and respond to comments on that proposal together with comments submitted on this supplemental notice in a forthcoming final action.

3. Relevant Legislative Action

Both before and since the 2009 Endangerment Finding, “Congress considered and rejected” multiple times” legislation that would have authorized or required the EPA to regulate GHG emissions from stationary sources that were subject to CAA section 111 for their non-GHG emissions, as well as mobile sources. *West Virginia*, 597 U.S. at 731 (quoting *Brown & Williamson*, 529 U.S. at 144). This history is particularly relevant

because of the established pattern in the 1970, 1977, and 1990 CAA Amendments of Congress adding requirements for regulatory action to CAA section 111. From 2007 to 2009, Congress considered legislation that would have authorized or required the EPA to prescribe emissions regulations for GHGs. For example, the Safe Climate Act of 2007 would have adopted findings and policies with respect to limiting global temperature increase, required participating in various forms of international cooperation, and added a new title VII to the CAA instructing the EPA to achieve phased GHG emission reduction targets and employ a cap-and-trade program to regulate GHG emissions from sources that EPA determines are appropriate to regulate, including sources that “have the largest emissions.”¹⁰⁶ Similarly, the American Clean Energy and Security Act of 2009 would have required international cooperation and added new titles to the CAA requiring the EPA to, among other things, regulate through a cap-and-trade program GHG emissions from large stationary sources and regulate GHG emissions from other stationary sources under CAA section 111 on a specified schedule.¹⁰⁷ Neither bill was enacted, and Congress has since declined to adopt similar legislation.¹⁰⁸

On several recent occasions, Congress has adopted legislation bearing on issues similar to those addressed here with respect to the EPA's authority under CAA section 111. This subsequent legislation either declined to adopt statutory language endorsing our authority to regulate GHG emissions from power plants or elected to use non-regulatory measures.

¹⁰⁶ H.R. 1590, 110th Cong. (2007) (proposed CAA section 703(b)(1)(A)).

¹⁰⁷ H.R. 2454, 111th Cong. (2009) (proposed CAA section 811). This bill, introduced on May 15, 2009—a month after the EPA proposed the 2009 Endangerment Finding—passed the House of Representatives by a 219–212 vote on June 26, 2009, but never received a vote in the Senate. <https://www.congress.gov/bills/111/congress/house-bill/2454>. The President and Administrator at the time expressed a strong preference for legislation but also a willingness to resolve legislative inaction by administrative means, and the Agency ultimately finalized the Endangerment Finding on December 7, 2009. See President Barack Obama, 2013 State of the Union Address (Feb. 12, 2013) <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/remarks-President-state-union-address> (“[I]f Congress won't act soon to protect future generations, I will.”).

¹⁰⁸ Congress's pattern of declining to provide the EPA such authority extends long before 2009. See *Coal. For Responsible Regulation*, 2012 U.S. App. LEXIS 25997, at *36–37 (Brown, J., dissenting from denial of reh'g en banc) (noting Congress expressly rejected proposals offered during the drafting of the 1990 CAA Amendments that would have authorized the EPA to regulate GHGs).

¹⁰⁵ This discussion summarizes the bases of the Endangerment Finding Rescission for informational purposes, only, and does not reopen that final rule or seek additional comment on issues addressed in that final rule. For more information, see the final rule preamble, accompanying RTC, and supporting documentation for the Endangerment Finding Rescission.

In 2022, Congress adopted the Inflation Reduction Act (IRA),¹⁰⁹ which appropriated funds to the EPA for a low emissions electricity program (LEEP) that would, among other things, “assess . . . the reductions in [GHG] emissions that result from changes in domestic electricity generation and use that are anticipated to occur” and ensure that such reductions “are achieved through use of the existing authorities of this chapter, incorporating the assessment” noted above.¹¹⁰ The version of the IRA adopted by the House of Representatives would have appropriated funds to EPA “to remain available until September 30, 2031, to carry out, with respect to greenhouse gases, sections 111, 115, 165, 177, 202, 211, 213, 231, and 612 of the Clean Air Act,” but this provision was eventually dropped and never enacted.¹¹¹

In 2025, Congress passed and the President signed into law the One Big Beautiful Bill Act (OBBBA). This legislation rescinded the unobligated balance of funding for the LEEP program and the majority of other programs funded under the IRA, as well as repealing certain IRA provisions.¹¹² Also in 2025, Congress passed, and the President signed into law, three joint resolutions adopted under the Congressional Review Act disapproving three waivers EPA granted under CAA section 209 that allowed California and participating States to enforce GHG emission regulations for motor vehicles and engines, up to and including zero-emissions standards that mandated a shift to electric vehicles.¹¹³

IV. Legal Framework for Action

In the 2015 NSPS and 2015 CPP, the EPA for the first time announced a legal basis for regulating GHG emissions from power plants under CAA section 111. The EPA asserted that section 111 authorizes the Agency to regulate GHG

emissions from a listed source category so long as it has a rational basis for doing so and does not require endangerment or contribution findings specific to GHG emissions from power plants. The Agency went on to determine that we had a rational basis for concluding that emissions of CO₂ from fossil fuel-fired power plants merit regulation under CAA section 111, in light of the 2009 Endangerment Finding and subsequent information, as well as the amount of GHG emissions from the source category; and that even if we were required to make new endangerment and contribution findings, the same information would justify such findings.¹¹⁴

The EPA is now proposing to repeal the suite of determinations, findings, and actions finalized in the 2015 NSPS for purposes of regulating GHG emissions from fossil fuel-fired power plants on statutory authority grounds distinct from those presented in the primary proposal in the June 2025 NPRM. Regardless whether the EPA must or can make a GHG-specific significant contribution finding for fossil fuel-fired power plants, the Agency cannot invoke its CAA section 111 authority to regulate emissions from power plants unless GHG emissions from such sources and the associated global climate change concerns used to justify regulation satisfy the statutory prerequisite for regulation under CAA section 111(b)(1)(A) in the first instance. That is, GHG emissions from power plants must contribute significantly to “air pollution that may reasonably be anticipated to endanger public health or welfare.” The Agency is proposing in this supplemental notice that global climate change concerns cannot satisfy that standard. Thus, the EPA is proposing to rescind the set of determinations the Agency made in the 2015 NSPS and retained in the 2024 CPS with regard to GHG emissions from fossil fuel-fired power plants, including the determination that it had a rational basis for regulating GHG emissions from fossil fuel-fired power plants and the endangerment and significant contribution findings made in the alternative (collectively “the 2015 Findings”).

The statutory authority for this supplemental proposal is the same as that relied upon to make the 2015 Findings in the first instance: CAA section 111(b)(1)(A). In addition, unless provided otherwise by statute, an agency may revise or rescind prior actions so long as it acknowledges the change in position, provides a

reasonable explanation for the new position, and considers legitimate reliance interests in the prior position.¹¹⁵

The EPA proposes that nothing in the language of the relevant statutory provisions prohibits or conditions our general authority to rescind prior actions through rulemaking. CAA section 111(b)(1)(B) explicitly calls upon the Administrator to “revise” standards of performance if appropriate and does not require retaining the same level of stringency when revising or rescinding the existing standards at issue here. Moreover, the statute does not prohibit the Administrator from rescinding findings under CAA section 111(b)(1)(A). The EPA notes that, with regard to the similar statutory provision in CAA section 202(a)(1), it has consistently assumed that it has the statutory authority to rescind endangerment and contribution findings. This is evidenced by both the EPA’s review of the merits of petitions for reconsideration of the Agency’s authority to regulate GHG emissions under CAA section 202(a)(1) and the recent Endangerment Finding Rescission.¹¹⁶

The EPA acknowledges that rescinding the 2015 Findings and repealing associated standards would involve significant changes to the more recent legal interpretations that we have relied on to regulate GHG emissions from power plants under CAA section 111. For example, the interpretation of CAA section 111(b)(1)(A) the EPA is proposing would reverse the basis for the 2015 Findings by concluding that global climate change concerns cannot satisfy the statutory standard for regulation of emissions under CAA section 111(b)(1)(A). Going forward, the EPA would regulate emissions from power plants that fall within the meaning of “air pollution which may reasonably be anticipated to endanger public health or welfare” as interpreted in this supplemental proposal. However, the EPA believes that a reconsideration of these legal interpretations is necessary to hew to

¹⁰⁹ Public Law 117–169, <https://www.govtrack.us/congress/bills/117/hr5376>.

¹¹⁰ CAA section 135(a)(5)–(6), 42 U.S.C. 7435(a)(5)–(6).

¹¹¹ The EPA issued a comment solicitation in November 2022 seeking input on how to use the funds to promote education, technical assistance, and partnerships but ultimately did not take further action. <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0878-0002>.

¹¹² 139 Stat. 155 (“RESCISSION OF FUNDING FOR THE LOW EMISSIONS ELECTRICITY PROGRAM. The unobligated balances of amounts made available to carry out section 135 of the Clean Air Act (42 U.S.C. 7435) are rescinded.”) <https://www.congress.gov/bills/119th-congress/house-bill/1/text>.

¹¹³ H.R.J. Res. 87; H.R.J. Res. 88; H.R.J. Res. 89; see also *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 107 n.1 (2025); Statement by the President (June 12, 2025), <https://www.whitehouse.gov/briefings-statements/2025/06/statement-by-the-president/>.

¹¹⁴ 80 FR 64530–31 (Oct. 23, 2015).

¹¹⁵ See *FDA v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898 (2025) (applying change-in-position doctrine); *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); see also *Clean Air Council v. Pruitt*, 862 F.3d 1, 8 (D.C. Cir. 2017) (“Agencies obviously have broad discretion to reconsider a regulation at any time.”).

¹¹⁶ See, e.g., 87 FR 25412 (Apr. 29, 2022) (noticing 2022 reconsideration denial documents in which the EPA assumed it could rescind the findings); 75 FR 49556, 49560–63 (Aug. 13, 2010) (denying reconsideration without asserting that the EPA lacked statutory authority to rescind or revise the Endangerment Finding); see generally 91 FR 7686, 7702–10 (Feb. 18, 2026).

the best reading of the statute and in light of recent legal developments, such as the Supreme Court's landmark decisions in *West Virginia* and *Loper Bright*.

The EPA further acknowledges that the 2015 Findings, and in particular regulatory requirements under the 2015 NSPS and 2024 CPS, have imposed significant burdens on Federal, State, and private-sector entities, including costs already incurred to achieve and demonstrate compliance with requirements by compliance dates in the past. We also understand that certain States, municipalities, and third-party organizations may have relied on the 2015 Findings or associated regulations in developing additional regulatory or voluntary programs. The EPA solicited public comment on these and other reliance interests in connection with the primary proposal in the June 2025 NPRM, which similarly proposed to rescind and repeal these findings and regulations. We acknowledge that the additional rationales in this action could potentially implicate additional and different reliance interests. Although we do not believe that any such reliance interests could justify retaining the findings and regulations in the absence of statutory authorization, we solicit comment on whether the there are additional reliance interests implicated by the additional rationales put forward in this supplemental proposal and, if so, why they are legitimate and significant and how we should consider them when taking final action.

To a certain extent, the EPA's reexamination of its authority to regulate GHG emissions under CAA section 111 based on global climate change concerns is informed by our recent rescission of the 2009 Endangerment Finding under CAA section 202(a)(1). The statutory provisions governing the endangerment and contribution findings under CAA sections 111(b)(1)(A) and 202(a)(1) differ in ways, although both call upon the EPA to regulate when a collection of emitting sources contributes (or contributes significantly) to "air pollution which may reasonably be anticipated to endanger public health or welfare." The 2015 Findings were based in significant part on the approach taken in the 2009 Endangerment Finding, and as such, many of the flaws identified in the 2009 Endangerment Finding similarly impact the legal and analytical approach we carried through to stationary sources in the 2015 NSPS and 2024 CPS.

Recent legal developments have also compelled the EPA to take a harder look

at the 2015 Findings. In particular, the Supreme Court's decision in *West Virginia*, which explained and applied the major questions doctrine, has particular bearing on the question whether the EPA has authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. The EPA discusses application of the major questions doctrine to this question in section V of this preamble. And in June 2024, the Supreme Court announced its decision in *Loper Bright*, which overruled *Chevron* deference to agency statutory interpretation and clarified that statutes have a single, best meaning, which is fixed at the time of enactment.¹¹⁷ As explained in section V of this preamble, the EPA's authority to regulate air pollutant emissions from a source category under CAA sections 111(b)(1)(B) and 111(a)(1) flows from the Administrator's listing of that category upon finding that it "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Regardless whether CAA section 111(b)(1)(A) requires the EPA to have only a rational basis for regulating air pollutants from an already listed source category or whether the Agency must make a pollutant-specific significant contribution finding, as a threshold matter, the EPA must demonstrate that the source category emissions satisfy the statutory prerequisite for regulation—that is, they must relate to qualifying "air pollution" within the meaning of the statute. And because the EPA is proposing to find that we lack authority under CAA section 111 to regulate GHG emissions from fossil fuel-fired power plants based on global climate change concerns, we are also proposing to repeal all regulations relating to GHG emissions from fossil fuel-fired power plants that the Agency has promulgated pursuant to CAA sections 111(b)(1)(B) and 111(a)(1), which are currently codified in 40 CFR part 60, subparts TTTT and TTTTa.

The EPA emphasizes that the scope of this supplemental notice is limited to the treatment of GHG emissions from fossil fuel-fired power plants under CAA section 111.¹¹⁸ While the proposed interpretation of CAA section 111(b)(1)(A) regarding authority to regulate GHG emissions could apply more broadly, other components of our analysis, including the applicability of the major questions doctrine and the evaluation of the impact of regulating GHG emissions from fossil fuel-fired

power plants based on the identified harms associated with global climate change, are specific to the fossil fuel-fired power plant source category.

The EPA acknowledges that we are proposing action in the context of a subject matter that has generated scientific and technical literature, including findings and reports of the National Academy of Sciences (NAS). For example, on July 16, 2026, the NAS released a consensus study report discussing the attribution of extreme weather events to global climate change.¹¹⁹ The report discusses scientific methodology and modeling associated with the attribution of extreme weather events such as heat waves, wildfires, or connective storms to GHG emissions produced from human activities. The report also discusses developments in weather event attribution and further steps for research and improving conclusions regarding event attribution. The issues raised in this supplemental proposal, however, are legal in nature and turn on statutory interpretation and the application of judicial precedent. We propose that this report, and prior information released by NAS, do not differ in any material respect from or conflict with the legal rationales set forth in this supplemental notice.

As discussed throughout this preamble, the EPA is proposing these changes to comply with limits on our statutory authority under the best reading of CAA section 111(b)(1)(A), to adhere to the legal limits on our power to set national policy within our constitutional system of democratic government, and to realign Agency resources to prioritize core statutory responsibilities to protect human health and the environment. Importantly, the Nation's policy response to global climate change concerns was a major issue in the 2024 presidential election, in which voters were presented with distinct legal and policy approaches and elected a candidate promising a change in policy. Under these circumstances, the election of a new Administration is an independent and sufficient basis for reassessing and revising legal interpretations to faithfully adhere to the best reading of the statute.¹²⁰

¹¹⁹ National Academies of Sciences, Engineering, and Medicine. 2026. Attribution of Extreme Weather and Climate Events and Their Impacts. Washington, DC: National Academies Press. <https://doi.org/10.17226/28590>.

¹²⁰ See *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part); *PETA v. USDA*, 918 F.3d 151, 158 (D.C. Cir. 2019) ("new administrations are entitled to reevaluate and modify agency practices, even longstanding ones"); *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d

¹¹⁷ 603 U.S. at 412–13 (overruling *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984)).

¹¹⁸ See *UARG*, 573 U.S. at 319–20.

Democratic accountability is essential to the exercise of delegated authority by administrative agencies,¹²¹ and retaining the 2015 Findings and associated GHG standards without clear statutory authority would frustrate, not promote, constitutional values and the rule of law. The EPA proposes to determine that it lacks authority to retain the 2015 Findings under the best reading of CAA section 111(b)(1)(A), and the statute controls regardless of policy preferences.¹²²

V. Rescission of the 2015 Findings

In this section, the EPA provides its bases for proposing to rescind the 2015 Findings that purported to provide the authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111 based on global climate change concerns. We are proposing to determine that these Findings and regulations exceed the EPA's statutory authority for multiple, independent reasons.

Section V.A.1 proposes that the best reading of CAA section 111(b)(1)(A), as informed by *Loper Bright* and principles of statutory interpretation, precludes the EPA from regulating power plant emissions based on global climate change concerns because such concerns cannot satisfy the statutory prerequisite for applying the Agency's regulatory authority. Rather, the best reading of the requirement to list a source category "if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare" is that the "air pollution" to be addressed under CAA section 111 must adversely impact public health or welfare through local or regional exposure. This proposed interpretation is based on the language of the statute, canons of statutory interpretation, statutory context, amendment and legislative history, and relevant case law, among other considerations. Because GHG emissions may endanger public health and welfare only by virtue of elevated global concentrations of GHGs in the atmosphere and the impacts of second- and third-order phenomena attributed to global climate change, *i.e.*, not based on local or regional exposure to GHG emissions, the

EPA is proposing to find that they cannot satisfy the standard in CAA section 111(b)(1)(A). The futility of regulating GHG emissions from fossil fuel-fired power plants under CAA section 111 in addressing the public health and welfare impacts attributed to global climate change further reinforces this proposed interpretation.

Section V.A.2 proposes two further bases for rescinding the 2015 Findings and associated regulations that stem from flaws in the 2015 Findings themselves. First, as an initial step, in 2015 the EPA combined two separate source categories to create the fossil fuel-fired EGU source category specifically for the purpose of regulating GHG emissions from these sources. In doing so, we failed to undertake a new listing under CAA section 111(b)(1)(A) and instead purported to subject these sources to additional regulatory controls without grappling fully with the predicate requirements for taking such an action. The EPA proposes that this omission renders the 2015 Findings and subsequent regulations unlawful. Second, the 2015 Findings relied on the same interpretive approach that underlays the 2009 Endangerment Finding under CAA section 202(a)(1), as well as on the existence of the endangerment and contribution findings in the 2009 Endangerment Finding. The rescission of the 2009 Endangerment Finding has abrogated the legal framework underlying the 2015 Findings, which the EPA proposes to find renders the 2015 Findings without legal basis. Relatedly, the flaws identified in the 2009 Endangerment Finding similarly render the 2015 Findings insupportable.

Section V.B proposes that the major questions doctrine applies to the EPA's assertion of authority under CAA section 111 and that the Agency lacks the clear congressional authorization required for the unheralded assertion of authority adopted in the 2015 Findings. We review the Supreme Court's precedents applying the major questions doctrine, including *UARG* and *West Virginia*, to propose that the Nation's policy response to global climate change concerns is a question of significant economic and political importance that Congress did not clearly empower the EPA to decide by authorizing the Administrator to list a category of sources for regulation "if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." We further propose that a limiting construction of CAA section 111(b)(1)(A) is necessary to avoid

serious constitutional concerns with the breadth of the provision required by the logic adopted in the 2015 Findings.

Section V.C of this preamble explains our proposed determination that the EPA lacks authority to regulate GHG emissions under CAA section 111(b)(1)(A) because such regulations have not and cannot diminish the public health and welfare impacts attributed to global climate change in any non-*de minimis* way. As presented below, the results of commonly accepted models indicate that even the elimination of all CO₂ emissions from fossil fuel-fired power plants in the United States (much more than the regulations we propose to repeal would do if fully implemented) would not yield impacts beyond a level that is well below the range of inherent variability in measurement for trends in GMST and GSLR. We propose that these findings further support the contemplated rescissions and repeals given the language of CAA section 111(b)(1)(A) and the background principles that Congress does not require futile efforts or include *de minimis* concerns in general statutory terms.

In proposing these rationales, the EPA is mindful that we issued the 2015 Findings during a transitional period regarding the standards for statutory interpretation and understandings of agency authority. The Supreme Court had, in *Massachusetts*, determined that GHGs fit within the CAA-wide definition of "air pollutant." At the time we responded to this decision, both the breadth of agency discretion and the question whether Congress reserves major policy questions for itself were sharply disputed. Judicial decisions in the intervening years have significantly clarified the law. In *Loper Bright*, the Supreme Court overruled the *Chevron* doctrine of deference to agency statutory interpretation, ruling that statutes "have a single, best meaning" that is "fixed at the time of enactment" and informed, but not dictated, by Executive Branch practice. 603 U.S. at 400–01 (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). And in *West Virginia*, the Supreme Court built upon its decisions in *UARG* and *Brown & Williamson*, among others, by confirming that an agency must have more than "a colorable textual basis" to claim authority to decide major questions of policy that Congress generally reserves for itself. 597 U.S. at 723.

Each of the legal bases proposed in this action is independent from the others and would be sufficient to rescind the 2015 Findings and repeal the associated GHG standards. The EPA

1032, 1043 (D.C. Cir. 2012) ("the inauguration of a new President and the confirmation of a new EPA Administrator" went "a long way toward explaining why EPA" changed policy).

¹²¹ See, e.g., *U.S. Telecom Ass'n v. FCC*, 855 F.3d 381 (D.C. Cir. 2017) (Brown, J., dissenting from denial of rehearing en banc); Elena Kagan, Presidential Administration, 114 Harv. L. Rev. 2245, 2252–53, 2332–34 (2001).

¹²² *Loper Bright*, 603 U.S. at 403; *West Virginia*, 597 U.S. at 735; *UARG*, 573 U.S. at 325.

is proposing that a lack of statutory authority for the 2015 Findings and related GHG regulations would require the rescissions and repeals even if the major questions doctrine did not apply. Similarly, we propose that the major questions doctrine would require finalizing this action even if the EPA had a plausible textual basis for asserting the authority to regulate GHG emissions in response to global climate change concerns. Each of these bases would require finalizing this action even if the futility of regulating GHG emissions from fossil fuel-fired power plants was not established in the record or was not an adequate basis for finalizing these actions. And that futility, in turn, provides another separate and independent basis for these proposed actions.

A. Best Reading of CAA Section 111(b)(1)(A)

The EPA is proposing that under the best reading of CAA section 111, fixed at the time of enactment and informed by ordinary principles of statutory interpretation and relevant history, the Agency's change in position in the 2015 NSPS (as retained in the 2024 CPS) exceeded the Agency's statutory authority for multiple reasons. First, we propose multiple reasons for concluding that CAA section 111(b)(1)(A) sets the outer bounds of the EPA's regulatory authority and is best read as authorizing the Agency to regulate emissions that contribute significantly to air pollution that itself endangers public health or welfare through local or regional exposure. Second, we propose that separate and apart from whether the EPA may regulate in response to global climate change concerns, several errors in the 2015 NSPS (retained in the 2024 CPS) would independently support rescinding these prior actions and associated emission standards for fossil fuel-fired power plants.

1. CAA Section 111(b)(1)(A) Does Not Subject Source Category Emissions to Regulation Based on Global Climate Change Concerns

The EPA is proposing to determine that CAA section 111(b)(1)(A) authorizes the Agency to regulate source category emissions that cause or contribute significantly to air pollution that may itself endanger health or welfare through local or regional exposure. This reading is consistent with the ordinary meaning of key terms and the statutory structure and history, our decades-long implementation of the statute prior to 2015, and background principles of statutory interpretation, including default rules for proximate

cause. This reading is also consistent with the Supreme Court's decisions in *Massachusetts* and *AEP*, both of which addressed distinct issues and must be read in harmony with subsequent decisions bearing on the EPA's authority and statutory interpretation, including *UARG*, *West Virginia*, and *Loper Bright*.

As an initial matter, we propose that the EPA's authority to list source categories under CAA section 111(b)(1)(A) informs the overall regulatory scope of CAA section 111. That is, the Agency's authority to regulate particular emissions from a given source category is cabined by whether the associated air pollution is the type that Congress authorized the EPA to address. This inquiry is informed by the function CAA section 111(b)(1)(A) plays in the statute's regulatory scheme for stationary sources. After the Administrator lists a source category under CAA section 111(b)(1)(A), section 111(b)(1)(B) provides that the EPA "shall publish proposed regulations, establishing Federal standards of performance for new sources within such category." The definition of "standard of performance" in CAA section 111(a)(1) states that it is "a standard for *emissions of air pollutants* which reflects the degree of emission limitation achievable through the application of the best system of emission reduction . . ." (emphasis added). Thus, we propose that the basis for any regulation of stationary sources under CAA section 111 must be "air pollution which may reasonably be anticipated to endanger public health or welfare."

In the 2015 NSPS, the EPA effectively listed a new source category—fossil fuel-fired EGUs—when it combined the fossil fuel-fired steam generating EGU and fossil fuel-fired stationary combustion turbine source categories.¹²³ Consistent with discussion in the June 2025 NPRM, we propose that the Agency erred in failing to undertake a listing for this new source category. That listing action would have required analyzing whether the global climate change concerns associated with power plant GHG emissions qualified as air pollution within the meaning of CAA section 111 and evaluating whether GHG emissions from power plants contribute significantly to such air pollution. Instead, we asserted that the Agency need only have a "rational basis" for regulation of GHG emissions from "a source category that was previously listed and regulated for other

pollutants."¹²⁴ Importantly, however, the rational basis we identified was the conclusion in the 2009 Endangerment Finding "that GHG air pollution may reasonably be anticipated to endanger public health or welfare."¹²⁵ We thus acknowledged in the 2015 NSPS that regulation is bounded by the statutory requirement that such regulation involve qualifying air pollution. We propose that even under the "rational basis" approach, it would be irrational to regulate emissions from a source category for purposes other than addressing "air pollution which may reasonably be anticipated to endanger public health or welfare."

a. Extending CAA Section 111(b)(1)(A) Regulation to Global Climate Change Concerns Is Inconsistent With the Statutory Text and Past Practice

CAA section 111(b)(1)(A) calls on the Administrator to list a category of stationary sources "if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare."¹²⁶ The Act does not define the term "air pollution." The EPA proposes to interpret "air pollution" as that which itself endangers public health or welfare through local or regional exposure. This interpretation is supported by the ordinary meaning at the time of enactment of the key terms "air pollution," "pollutant," and "pollution," the statutory definitions of "air pollutant" and "welfare" in CAA section 302, the context in which these terms appear, and the Agency's consistent practice prior to 2015 and 2009.

As noted above, the scope of the EPA's authority to list source categories under CAA section 111(b)(1)(A) informs the overall regulatory scope of CAA section 111. That is, the Agency's authority to regulate a given air pollutant from a given source category under CAA section 111 is cabined by whether the associated air *pollution* is the type that Congress intended the EPA to address. At the time Congress added the terms "air pollutant" and "air pollution" to CAA section 111, "pollutant" was defined as "[a]nything that pollutes; especially, any gaseous, chemical, or organic waste that

¹²⁴ *Id.* at 64530.

¹²⁵ See *id.* at 64522–24, 64529–31. Specifically, the 2015 NSPS cited to the 2009 Endangerment Finding, subsequent 2010 reconsideration denials, and additional information that "len[t] further credence to the validity of the Endangerment Finding." *Id.* at 64530.

¹²⁶ 42 U.S.C. 7411(b)(1)(A).

¹²³ See 80 FR 64510, 64531 (Oct. 23, 2015).

contaminates air, soil, or water,”¹²⁷ and “pollution” was defined as “[t]he contamination of soil, water or the atmosphere by the discharge of noxious substances.”¹²⁸ The definition of the root word “pollute”—“[t]o dirty, contaminate”—confirms the relationship of these terms to concepts of contamination and toxicity.¹²⁹ The central concept is the addition of a contaminant, something that “make[s] impure by contact or mixture.”¹³⁰ CAA section 302(g) defines “air pollutant” as any “air pollution agent or combination of such agents” that “is emitted into or otherwise enters the ambient air.”¹³¹ The underlying concept of dangerousness and contamination reinforces the conclusion that “air pollution”—when read in the context of CAA section 111, as the Supreme Court held the EPA must in *UARG*—refers to that which itself endangers public health or welfare through local or regional exposure.

Contemporaneous usage of the term “air pollution” in the 1960s and 1970s supports this reading. Judicial decisions issued around that time used the term exclusively in reference to local and regional exposure.¹³² News reports and legislative debates similarly addressed air pollution problems arising from local and regional exposure, including smog

and health and welfare impacts related to inhalation and physical contact.¹³³

Understandings of terms used in the CAA section 302(h) definition of “welfare” also support the understanding that CAA section 111(b)(1)(A) encompasses air pollution with adverse impacts from local or regional exposure. The statute provides that references to “effects on welfare” include “effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate,” damage to property, transportation hazards, and effects on economic values and personal comfort and well-being. The ordinary meaning of “climate,” an undefined term, was “[t]he prevailing weather in a particular region” or “[a] region manifesting particular meteorological conditions.”¹³⁴ Similarly, “weather” meant “[t]he state of the atmosphere at a given time and place, described by temperature, moisture, wind velocity, and pressure.”¹³⁵ Both terms must also be read together in context, including by reference to the other terms enumerated in the list.¹³⁶ Each of the other terms in the definition of “welfare” refers to things and mechanisms of action that occur in a particular place or under regionally bounded conditions.

The terms Congress used speak to air pollution with adverse impacts from local and regional exposure, not global climate change concerns that entail a very different and much longer causal chain. The definition is broad enough to encompass the various air pollutants and air pollution of concern, each of which interacts differently with the environment—e.g., smog and PM. Congress understood that air pollution challenges varied from State to State and region to region, while, at the same time, recognizing that the most acute

challenges—e.g., smog in highly populated urban areas—had similarities that would benefit from national standards.¹³⁷ But none of the many terms listed in the definition of welfare would have been understood, absent modifying terms, to refer to global considerations. Nor has Congress added terms like “global” or “change” that would have expanded the scope of the effects on welfare encompassed within the definition.¹³⁸

The interpretation of “air pollution” reflected in the 2015 Findings is different in kind from contemporaneous understandings of the term. That interpretation was, to a significant degree, rooted in the 2009 Endangerment Finding. *See* 80 FR 64531. The 2009 Endangerment Finding defined the relevant “air pollutant” as six “well-mixed GHGs” and the relevant “air pollution” as total global concentrations of “the combined mix of” these GHGs “which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare.” 74 FR 66516. The 2015 Findings likewise treated the six long-lived and directly emitted GHGs as the relevant air pollution, 80 FR 64531 n.110, and provided that such “air pollution” was reasonably anticipated to endanger public health or welfare through the mechanism of global climate change, 80 FR 64531. The 2015 Findings further stated that the regulated “air pollutant” was also GHGs, although the standards of performance for fossil fuel-fired power plants were expressed in the form of limits on CO₂, given that CO₂ comprised more than 99 percent of total estimated GHG emissions from the regulated sources. 80 FR 64537.

In contrast to the air pollution that the EPA has historically addressed under CAA section 111 and that is addressed

¹²⁷ *Pollutant*, Am. Heritage Dictionary 1015 (1970); *see also Pollutant*, 3 Webster’s Third New Int’l Dictionary 1756 (1966) (“something that pollutes: a polluting substance, medium or agent”).

¹²⁸ *Pollution*, Am. Heritage Dictionary 1015 (1970); *see also Pollution*, 3 Webster’s Third New Int’l Dictionary 1756 (1966) (“the action of polluting or the state of being polluted: defilement, desecration, impurity, uncleanness”).

¹²⁹ *Pollute*, Am. Heritage Dictionary 1015 (1970); *see also Pollute*, Black’s Law Dictionary 1043 (5th ed. 1979) (“To corrupt or defile. The contamination of soil, air and water by noxious substances and noises.”); *Pollute*, 3 Webster’s Third New Int’l Dictionary 1756 (1966) (“to make physically impure or unclean: befoul, dirty, taint”).

¹³⁰ *Contaminate*, Am. Heritage Dictionary 156 (1970); *see also Contaminate*, 1 Webster’s Third New Int’l Dictionary 491 (1966) (“to soil, stain, corrupt, or infect by contact or association”).

¹³¹ 42 U.S.C. 7602(g).

¹³² *See, e.g., Washington v. GM Corp.*, 406 U.S. 109, 115–16 (1972) (declining to exercise original jurisdiction over complaint alleging conspiracy to restrain the development of air pollution control devices for motor vehicles because, although “Congress has largely preempted the field with regard to ‘emissions from new motor vehicles,’ . . . geophysical characteristics which define local and regional airsheds are often significant considerations in determining the steps necessary to abate air pollution”); *Friends of Earth v. FCC*, 449 F.2d 1164, 1165–66 (D.C. Cir. 1971) (addressing challenge to the FCC’s treatment of automobile advertisements that petitioners alleged took a position on motor vehicle air pollution worsening local conditions in New York City, including “dangerous hydrocarbons in the air”).

¹³³ *See, e.g., Coal. for Responsible Regulation*, 2012 U.S. App. LEXIS 25997, at *32–37 (Brown, J., dissenting from denial of *reh’ en banc*) (summarizing relevant history).

¹³⁴ *Climate*, Am. Heritage Dictionary 136 (1970); *see, e.g., Alameda Cons. Ass’n v. California*, 437 F.2d 1087, 1096 (9th Cir. 1971) (using “climate” to discuss local environmental conditions in San Francisco Bay); *Levenson’s Case*, 194 NE2d 103, 105 (Mass. 1963) (using “climate” to address whether moving to another state with a different climate is a covered medical expense).

¹³⁵ *Weather*, Am. Heritage Dictionary 785 (1970).

¹³⁶ *See Fischer v. United States*, 603 U.S. 480, 487 (2024) (“[T]he canon of *noscitur a sociis* teaches that a word is ‘given more precise content by the neighboring words with which it is associated.’ That ‘avoid[s] ascribing to one word a meaning so broad that it is inconsistent with’ ‘the company it keeps’” (citations omitted)); *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) (applying canon to interpret the broad term “communication,” as used in a statutory definition of “prospectus,” to mean only public-facing communications that offer securities).

¹³⁷ *See, e.g., S. Rep. No. 91–1196*, at 1–8, 24 (1970) (discussing need for and intent of Senate bill that would eventually form much of the 1970 CAA by reference to urban pollution problems and areas in proximity to stationary and mobile sources and recognizing that “protection of the public health and welfare requires definitive knowledge of the causal relationships between exposure to air pollution agents . . . under varying environmental conditions”); H.R. Rep. No. 91–1146, at 6 (1970) (similar for House bill that informed aspects of the 1970 CAA).

¹³⁸ Congress has used such language to specify the relevance of global climate change concerns in more recent amendments to different programs. CAA section 211(o)(2)(B)(ii), for example, provides that the EPA must consider the impact of the production and use of renewable fuels on “climate change” when setting renewable fuel volumes under the RFS program. 42 U.S.C. 7545(o)(2)(B)(ii) (emphasis added); *see id.* 7545(o)(1) (defining various renewable fuels in part by reference to GHG emissions).

under title I of the CAA generally, GHGs do not endanger public health or welfare through local or regional exposure. Rather, any adverse impacts stem from GHGs becoming well mixed in the upper atmosphere, resulting in elevated global GHG concentrations. It is then these elevated GHG concentrations that drive phenomena that, in turn, affect public health and welfare. To this end, the 2009 Endangerment Finding, on which the 2015 Findings are based, asserted that GHG “air pollution” would *lead to* increases in global temperature and change to ocean pH that, in turn, would *lead to* environmental phenomena, in combination with an open-ended universe of additional factors, which would potentially have adverse health and welfare impacts of varying severity in certain regions.

The Administrator admitted at the time that the circumstances were “unique” because “[n]one of th[e] human health effects” identified in the Endangerment Finding “are associated with direct exposure to greenhouse gases.” 74 FR 66527. With respect to welfare effects, the Administrator acknowledged that the primary effects of concern could be considered health or welfare impacts¹³⁹ and that certain welfare impacts were “effects on people that do not rise to the level of health effects” but utilize the same causal chain. 74 FR 66527; *see* 74 FR 66531.¹⁴⁰ In the same way that the EPA found in the Endangerment Finding Rescission that regulating GHG emissions based on global climate change concerns “requires reading an additional instance of ‘cause, or contribute’”¹⁴¹ into CAA section 202(a)(1), the EPA proposes that reading CAA section 111 to authorize the regulation of GHG emissions based on global climate change concerns would similarly require reading section 111(b)(1)(A) as encompassing the “emission of air pollutants that cause, or contribute significantly to, air pollution

that causes, or contributes to, endangerment of public health or welfare.”

The EPA is proposing that background principles of causation and proximate cause support our proposed interpretation of CAA section 111(b)(1)(A) as not extending to regulation of fossil fuel-fired power plants based on global climate change concerns. In particular, the EPA proposes that the terms “cause,” “contribute,” and “reasonably be anticipated to endanger” must be read consistent with these principles. In enacting and amending CAA section 111(b)(1)(A), Congress legislated on a foundation that included “default rules,” including the background principles of causation and proximate cause.¹⁴² These rules are “presumed to have [been] incorporated, absent an indication to the contrary in the statute itself.”¹⁴³ Additionally, Congress endorsed the incorporation of proximate cause principles when it added the phrase “may reasonably be anticipated” to this section in the 1977 CAA Amendments. That phrase is another way of saying “reasonably foreseeable,” a longstanding touchstone of proximate cause.¹⁴⁴

GHG emissions from fossil fuel-fired power plants in the United States do not have a sufficiently close connection to the harms identified in the 2015 Findings to fit within the legal meaning of “cause” or “contribute.” This understanding is complemented by the term “reasonably” in the phrase “air pollution which may reasonably be anticipated to endanger public health or welfare.” Like the terms “cause” and “contribute,” the term “reasonably” places an outer legal limit on the authority to anticipate dangers to public health and welfare from air pollution. The greater the number of causal links involved in anticipating such endangerment, the more difficult it is to qualify the anticipation of the danger as “reasonable.” Global climate change concerns involve causal relationships that are too uncertain, conjectural, remote, and convoluted by intervening

and confounding factors to fit within the terms “cause,” “contribute,” and “reasonably be anticipated to endanger” as used in CAA section 111(b)(1)(A).

This reading follows from the understanding discussed above that title I, including CAA section 111, was designed to address air pollution with harmful impacts from local and regional exposure and that is amenable to analysis using ordinary causation standards. In specifying that emissions may “cause, or contribute to” air pollution (emphasis added), and that air pollution need only “be reasonably anticipated to endanger public health or welfare,” Congress signaled in CAA section 111(b)(1)(A) that regulation may be appropriate when harm is not yet occurring or is not certain to occur. But that language bearing on the degree of certainty required does not override ordinary background principles governing the limits of an attenuated causal chain.

The 2015 Findings, in which the EPA first interpreted CAA section 111 as allowing it to regulate based on global climate change concerns, represented a departure from past Agency practice. From the enactment of CAA section 111(b)(1)(A) in 1970 until 2015, the EPA used its authority to target air pollution that adversely impacts public health or welfare through local or regional exposure. The EPA generally promulgated regulations—NSPS for new sources and emission guidelines for existing sources—in waves, starting in 1971. Once a source category was listed pursuant to CAA section 111(b)(1)(A), the EPA exercised judgment as to which air pollutant(s) emitted from each source category to regulate. The earliest NSPS promulgated under CAA sections 111(b)(1)(B) and 111(a)(1) in 1971 regulated emissions of PM (sometimes expressed and regulated as opacity), NO_x, SO₂, CO, and sulfuric acid mist.¹⁴⁵ Other pollutants addressed in the early regulatory push of the 1970s included total fluorides,¹⁴⁶ total reduced sulfur,¹⁴⁷ and VOCs.¹⁴⁸ In 1996, the EPA started regulating non-methane organic compounds emitted from landfills on the basis that they contribute to ozone formation, that some NMOC are known or suspected carcinogens or cause other non-cancer health effects, and that they can cause

¹³⁹ For example, the EPA in the 2009 Endangerment Finding understood impacts on “well-being” as used in the CAA section 302(h) definition of “welfare” to be relevant “whether [the impacts] result directly or indirectly from the pollution in the air.” 74 FR 66528.

¹⁴⁰ The Agency acknowledged that difficult questions about the distinction between health and welfare impacts was something the “EPA has not had to resolve” in the past, “as it has been clear whether the effects relate to public health or relate to public welfare, with no confusion over what category was at issue.” 74 FR 66527. Rather than take this analytical difficulty as a sign that the causal chain was different in kind from the type of “air pollution” addressed by CAA section 202(a)(1), however, we proceeded to finalize a novel invocation of authority to regulate in response to global climate change concerns.

¹⁴¹ 91 FR 7686, 7714 (Feb. 18, 2026).

¹⁴² *See, e.g., Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 201 (2017); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 347 (2013); *City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030 (9th Cir. 2021) (en banc).

¹⁴³ *Nassar*, 570 U.S. at 347.

¹⁴⁴ *Foreseeable*, 1 Webster's Third New Int'l Dictionary 890 (1966) (“being such as may reasonably be anticipated”); *see, e.g., Hicks v. United States*, 511 F.2d 407, 421 (D.C. Cir. 1975) (finding “proximate cause” satisfied because it was “foreseeable” that a hospital’s release without warning of an alcoholic patient with a history of abusing his wife could result in harm to the patient’s wife).

¹⁴⁵ 36 FR 24877 (Dec. 23, 1971).

¹⁴⁶ *See, e.g.,* 41 FR 3828 (Jan. 26, 1976) (NSPS for primary aluminum reduction plants).

¹⁴⁷ *See, e.g.,* 43 FR 7572 (Feb. 23, 1978) (NSPS for kraft pulp mills).

¹⁴⁸ *See, e.g.,* 39 FR 9317 (Mar. 8, 1974) (NSPS for storage vessels for petroleum liquids).

an odor nuisance.¹⁴⁹ The 1996 landfills rule also regulated methane emissions based on the EPA's finding that such emissions present a fire and explosion hazard, although we acknowledged "ancillary" benefits that may arise given developing concerns about global climate change.¹⁵⁰ Overwhelmingly, the set of air pollutants and air pollution concerns addressed in the 1970s remained the focus of regulation under CAA section 111 for both new sources (under 111(b)(1)(B)) and existing sources (under 111(d)) through the ensuing decades.¹⁵¹ Emissions of each of these regulated air pollutants result in air pollution that directly affects public health or welfare through exposure to those emissions, or to air pollution created through the reaction of those emissions with other airborne chemicals or conditions, at the local or regional scale.¹⁵² Thus, the EPA deviated from over forty years of precedent when it expanded the reach of CAA section 111 in the 2015 Findings.

The approach taken for the 2015 Findings also required the EPA to find endangerment and significant contribution when most emissions are from international sources. This was similarly a departure from past practice, and it expanded the reach of CAA section 111 by allowing the EPA to regulate GHG emissions from U.S. fossil fuel-fired power plants when the overwhelming bulk of the emissions underlying the finding of endangerment were from sources outside the United States. The EPA now proposes that interpreting "air pollution which may reasonably be anticipated to endanger public health or welfare" to permit regulation even when most of the endangerment stems from international sources is contrary to CAA section 111. Congress has specifically provided in the CAA when and how the EPA may consider international emissions. For example, CAA section 115 authorizes the EPA to require controls for domestic emissions that contribute to air pollution that endangers public health or welfare in another country only when, among other things, that country has adopted reciprocal protections for emissions into the United States.¹⁵³

CAA section 179B authorizes the EPA to account for the impact of international emissions on NAAQS attainment under certain conditions.¹⁵⁴ Most tellingly, Congress adopted a new regulatory regime in 1990—title VI—in response to global concerns about depletion of the ozone layer, which contains its own findings, policies, and regulatory authorities that required the EPA to phase out domestic use of ozone-depleting substances.¹⁵⁵ None of these provisions encompass GHG emissions, and all support the conclusion that Congress does not presume that general authorities in the CAA encompass international emissions. Rather, Congress knows how to provide for the consideration of and regulation in response to international emissions, and has not done so for GHG emissions, either in CAA section 111 or elsewhere.

Moreover, the EPA proposes that Congress's inclusion of the qualifier "significantly" in CAA section 111(b)(1)(A) is evidence of its intent for the EPA to regulate only when a source category has a meaningfully large contribution to air pollution that may reasonably be anticipated to endanger public health or welfare. Congress used the phrase "cause(s) or contribute(s) to air pollution which may reasonably be anticipated to endanger public health or welfare" seven times in the CAA.¹⁵⁶ Notably, Congress used the phrase "cause(s) or contribute(s) *significantly* to air pollution which may reasonably be anticipated to endanger public health or welfare" four times in the Act.¹⁵⁷ Congress's intentional addition of "significantly" in CAA section 111 is evidence of an intentional design, under this section in particular, for the EPA to regulate only when a source category is responsible for a meaningfully large portion of the anticipated adverse public health or welfare impacts caused by the air pollution. This interpretation is corroborated by the legislative history of CAA section 111, which speaks to Agency regulation of source categories under CAA section 111 that have a "substantial" impact on "endangerment."¹⁵⁸

However, as discussed above, climate change concerns are global in nature—in the 2009 Endangerment Finding, the EPA determined that it was the elevated concentrations of globally well-mixed GHGs in the atmosphere that led to climate change and adverse impacts on public health and welfare. 74 FR 66516.¹⁵⁹ These elevated GHG concentrations are the result of emissions from myriad sources all over the world. It is thus challenging for a single source category's contribution to the global total to demonstrate significant adverse impacts; in 2022, fossil fuel-fired power plants in the United States contributed 3.0 percent of global GHG emissions.¹⁶⁰ Additionally, the EPA is proposing to interpret CAA section 111(b)(1)(A) as requiring the Agency to consider a source category's contribution to the *endangerment* caused by air pollution, rather than to just the air pollution itself. Due to the inherent nature of global climate change, GHG emissions from an individual U.S. source category are necessarily only one small component of a much larger and complex global emissions picture. For global climate change concerns, the threshold for a quantity of GHGs to comprise a "significant" contribution to either elevated atmospheric GHG concentrations (the purported "air pollution") or the adverse impacts thereof, is well above the likely contributions of a single source category. Our proposed futility analysis below further supports this conclusion. Thus, the EPA is proposing to find that it could not have been Congress's intent for the Agency to use CAA section 111 to regulate GHG emissions from fossil fuel-fired power plants based on global climate change concerns.

Moreover, CAA section 111 is distinguishable from statutory provisions or proposed legislation focused on global pollution or climate change concerns. For instance, to address the dangers posed by ozone depleting chemicals, title VI of the CAA, enacted in the CAA Amendments of 1990, specifically references "global warming potential," the "Montreal Protocol" as governing international treaty, and "international cooperation."¹⁶¹ In contrast, CAA section 111 includes no references to global impacts or concerns. The CAA Amendments of 1990 were motivated in

¹⁴⁹ 61 FR 9905, 9906 (Mar. 12, 1996).

¹⁵⁰ *Id.*

¹⁵¹ The 1979 "Priority List An Additions to the List of Categories of Stationary Sources," in which the EPA promulgate a list of major source categories for which standards of performance were to be promulgated by 1982, considered emissions of nine pollutants: VOC, NO_x, PM, SO₂, carbon monoxide, lead, fluorides, acide mist, and hydrogen sulfide. 44 FR 49222 (Aug. 21, 1979).

¹⁵² The EPA addresses landfill methane emissions in section VI of this preamble.

¹⁵³ 42 U.S.C. 7415.

¹⁵⁴ 42 U.S.C. 7509a.

¹⁵⁵ 42 U.S.C. 7671 *et seq.*

¹⁵⁶ 42 U.S.C. 7408(a)(1)(A), 7415(a), 7422(a), 7521(a)(1), 7521(a)(3)(D), 7521(e), 7571(a)(2)(A).

¹⁵⁷ 42 U.S.C. 7411(b)(1)(A), 7411(g)(2), 7547(a)(1), 7547(a)(4) (emphasis added). Note that 42 U.S.C. 7411(g)(2) and 7547(a)(4) do not include "cause(s)."

¹⁵⁸ See, e.g., H.R. Rep. No. 91–1146, at 9–10 (explaining that the draft legislation would authorize the EPA to "establish emission standards with respect to any class of new stationary source which because of the nature of or amount of emissions may contribute substantially to endangerment of the public health or welfare").

¹⁵⁹ The 2015 Findings adopted the same approach to characterizing the relevant air pollution. See 80 FR 64517.

¹⁶⁰ 90 FR 25768 & n.120.

¹⁶¹ See CAA sections 601, 602(e), 614, 617 *et seq.*, 42 U.S.C. 7671 *et seq.*

part by the international negotiations leading up to the Montreal Protocol and the need for global action on the far-reaching effects of ozone depletion. Title VI evinces a congressional intent to address an international problem of global concern through express language, whereas CAA section 111 includes no such language describing global implications or specificity on reductions.

CAA section 111 may also be contrasted with attempts to amend the CAA to add authority to address global climate change. The American Clean Energy and Security Act of 2009 would have instituted a cap-and-trade system featuring renewable energy credits to reduce GHG emissions, including from fossil fuel-fired power plants, and would have directly spoken to the global concerns surrounding climate change.¹⁶² Congress understood that addressing global climate change concerns would have required a novel legislative approach, and this legislative proposal would have added express provisions to the CAA addressing these concerns, including through promoting CCS.¹⁶³ Unlike this legislative proposal, CAA section 111 includes no such reference to global climate change or international concerns. As such, this contrast confirms our proposed conclusion that Congress did not intend CAA section 111 to apply to GHG emissions from fossil fuel-fired EGUs based on global climate change concerns.

The EPA requests comment on its proposed interpretations of the terms “pollutant,” “pollution,” and “air pollution” as focusing on the concepts of dangerousness and contamination, consistent with their use at the time of enactment of the 1970 CAA. The Agency is similarly requesting comment on its proposed interpretation of “climate” in the definition of “welfare” in CAA section 302(h) as referring to local or regional weather phenomena. We further solicit comment on the understanding that the 2015 Findings represented an expansion of the Agency’s authority under CAA section 111 that departed from past practice under that section. We also request comment on the proposed interpretation that regulating GHG emissions based on global climate change concerns would require reading an additional instance of “cause or contribute” into CAA section 111(b)(1)(A), which would be inconsistent with the background legal principles of causation and proximate

cause that inform the provision. Relatedly, we request comment on the proposed position that finding endangerment when the overwhelming bulk of emissions are from sources outside the United States is impermissible under CAA section 111, which does not speak to international emissions. And finally, we request comment on the proposed interpretation of “significantly” in CAA section 111(b)(1)(A) as indicating Congress’s intent for the Agency to regulate only when a source category is responsible for a meaningful portion of the identified harm.

b. The History of CAA Section 111 Supports an Interpretation of “Air Pollution” Based on Local or Regional Exposure

The statutory history of CAA section 111 and the structural relationship between CAA sections 107–110, section 111, and section 112 provide context for interpreting the “air pollution which may reasonably be anticipated to endanger public health or welfare” addressed by section 111(b)(1)(A) as being that which causes adverse impacts through local or regional exposure. Congress enacted CAA section 111 in the 1970 CAA to address the impacts of criteria pollutants and similar air pollutants on public health and the environment.¹⁶⁴ The newly introduced CAA section 111, which called for performance standards for new (and to a certain extent existing) sources, was part of a three-pronged regime to address air pollution from stationary sources.

CAA section 111 applies to stationary sources across the country to eliminate pollution problems at the time new sources were built, when it would be more cost effective to install air pollution controls (as opposed to retrofitting at a later date, apart from the section’s existing-source authority which, as the Supreme Court recognized in *West Virginia*, was originally and for much of the statute’s existence a “little-used backwater”). Congress designed CAA section 111 to level the playing field among States by preventing sources from avoiding restrictions that applied in nonattainment areas under the NAAQS program by preferentially locating in attainment areas, which would result in a geographic “race to the bottom.” That is, Congress designed CAA section 111 to work in concert with sections 107–110 (establishing the NAAQS program) and section 112 (establishing the HAP program) to buttress those programs and address the

same types of air pollution regulated under those provisions. To this end, Senator Muskie, the Senate sponsor of the 1970 CAA Amendments, stated:

[T]he bill provides that newly constructed sources of pollution must meet rigorous national standards of performance. While we clean up existing pollution, we must also guard against new problems. Those areas which have levels of air quality which are better than the national standards should not find their air quality degraded by the construction of new sources. There should be no “shopping around” for open sites.¹⁶⁵

Critically, sections 107–110 and section 112 regulate criteria air pollutants and HAPs, respectively—all of which are pollutants that adversely impact human health or welfare through local or regional exposure. For purposes of this proposed rule, we use the phrase “local or regional exposure” to distinguish air pollution that impacts public health or welfare by its presence in the ambient air from “air pollution” consisting of six well-mixed GHGs that, as reflected in the 2015 Findings, impacts public health and welfare only indirectly and not by exposure to its presence in the ambient air.¹⁶⁶

For certain regulated air pollutants that impact health or welfare through local or regional exposure, the emissions themselves are the air pollution that endangers public health or welfare, *i.e.*, the emissions are the air pollution with adverse health and welfare impacts. An example is CO, which can be harmful, and even fatal, to humans at sufficient localized concentrations.¹⁶⁷ Similarly, emissions of lead have deleterious effects on children’s health that result from exposure to emissions.¹⁶⁸ For other regulated air pollutants, emissions contribute to air pollution that endangers public health or welfare by interacting with other airborne chemicals or environmental factors such as sunlight to create the air pollution that endangers, *i.e.*, the emitted air pollutants are ingredients that create the air pollution that endangers public

¹⁶⁵ Senate Debate on S. 4358 at 227 (Sept. 21, 1970).

¹⁶⁶ See 80 FR 64510, 64517–22 (discussing global climate change), 64531 n.110 (the air pollution defined in the 2009 Endangerment Finding is the atmospheric mix of six long-lived and directly emitted GHGs).

¹⁶⁷ U.S. Environmental Protection Agency. (Last updated Oct. 7, 2025). Carbon Monoxide’s Impact on Indoor Air Quality: <https://www.epa.gov/indoor-air-quality-iaq/carbon-monoxides-impact-indoor-air-quality>.

¹⁶⁸ U.S. Environmental Protection Agency. Integrated Science Assessment for Lead. January 2024. EPA/600/R-23/375.

¹⁶² H.R. 2454, 111th Cong. (2009).

¹⁶³ *Id.* at section 112 *et seq.* (proposing authorities for CCS within the context of the CAA).

¹⁶⁴ S. Rep. No. 91–1196, at 18 (Sept. 17, 1970).

health or welfare in combination through local or regional exposure. An example is acid rain, in which air pollutants such as SO₂ interact locally and regionally with additional airborne chemicals to form acidic precipitation.¹⁶⁹ In either case, the scale at which emissions of, and exposure to, each of these air pollutants adversely impacts health or welfare is local or regional. That is, the pollutants are emitted from sources into the air and may travel a certain distance from the originating source, but they need not become globally well-mixed in the atmosphere to adversely impact human health or welfare through a further chain of subsequent effects.

In amending the CAA, Congress continued to focus on air pollutants that impact health or welfare through local or regional exposure. For example, in 1977, Congress added to the CAA visibility protections, which primarily concern particulates (including SO₂ and NO_x, which form particulates in the atmosphere),¹⁷⁰ as well as requirements for nonattainment areas, which concern the NAAQS. For CAA section 111, Congress amended the methodology for determining standards of performance and emission guidelines; these revisions were based on the oil shortage and the consequent need to rely more heavily on combustion of coal to generate energy. The legislative history indicates that Congress was primarily concerned about SO₂ emissions, which confirms that Congress viewed CAA section 111 as focused on air pollutants that impact health or welfare through local or regional exposure.¹⁷¹

In the 1990 CAA Amendments, Congress continued to focus on those air pollutants, as evident by its strengthening of the NAAQS and SIP program (criteria pollutants), significant revisions to CAA section 112 (HAPs), and addition of an acid rain program (SO₂ and NO_x). With respect to CAA section 111, Congress again amended the methodology for determining standards of performance and emission guidelines to largely return to the provisions as they read after the 1970 CAA Amendments because the concerns over regulation of SO₂ emissions had dissipated. Congress also expressly linked CAA section 111 regulations to the national consistency and mobility concerns animating earlier legislation by amending CAA section 111(f) to specify

that the EPA must consider the mobility and competitive nature of the relevant industries when prioritizing listed source categories for regulation. And when Congress sought to address global problems—for example, stratospheric ozone depletion—it did so explicitly by enacting a new title of the CAA with a distinct set of provisions addressing the unique problem. As noted above, the criteria pollutants—CO, lead, ground-level ozone, NO_x, PM, and SO₂—adversely impact public health or welfare through exposure to emissions of the pollutant itself, through interaction with other chemical constituents or environmental factors to create air pollution that then threatens harm on a local or regional scale, or both. Similarly, HAPs endanger health and welfare by virtue of their emission into and existence in the air. For example, exposure to benzene in emissions from burning coal and oil motor vehicle exhaust, and evaporation from gasoline service stations and industrial solvents, can lead to a variety of adverse impacts on human health.¹⁷² Thus, Congress designed sections 107–110 and section 112 to address air pollutants and air pollution that adversely impact health or welfare through direct exposure at the local or regional levels.¹⁷³

In title II of the CAA, Congress included references to the types of air pollutants it intended the EPA to regulate in CAA section 202 itself. For example, CAA section 202(3)(A)(i) references regulation of hydrocarbons, CO, NO_x, and PM. Similarly, CAA section 202(b)(1)(A) addresses emissions of CO, hydrocarbons, and NO_x, and section 202(l) directs the EPA to consider promulgating regulations

addressing air toxics including benzene and formaldehyde. For stationary sources addressed in title I, Congress similarly specified air pollutants of concern in a manner that reflected the title's tripartite structure. Just as the scope of the air pollutants that Congress expressly addressed in CAA section 202 informs the breadth of the EPA's regulatory authority under that provision, the scope of the air pollutants addressed under CAA sections 107–110 and section 112 informs the EPA's authority to regulate under title I, including under CAA section 111. And because CAA section 111 was designed to work in concert with these provisions by ensuring that new sources did not exacerbate existing air pollution problems and by preventing new sources from geographic forum shopping, it follows that Congress intended it to address the same types of air pollutants and air pollution.

GHG emissions may impact health or welfare only indirectly through on the various causal steps involved in global climate change. In other words, it is the basket of various causes and affects attributed to global climate change, rather than exposure to GHGs themselves, that may adversely impact health or welfare. This is in marked contrast to the types of air pollution that Congress designed CAA sections 107–110 and section 112 to address. We propose to find it significant that neither GHGs nor CO₂ specifically (nor any of the other individual “six well-mixed” GHGs) appear in CAA sections 107–110 or 112. Nor are GHGs, collectively or individually, addressed in any of the regulatory provisions of title I.¹⁷⁴ Congress also did not include in Title I any *other* substances that harm public health or welfare based only on indirect effects, *e.g.*, on elevated global concentrations in the upper atmosphere that contribute to changes to the global climate system that, in turn, contribute to impacts on health or welfare. These conspicuous omissions support the EPA's proposed conclusion that the emissions subject to regulation under CAA section 111, like those under CAA sections 107–110 and section 112, are those that cause or contribute significantly to air pollution that endangers public health or welfare

¹⁶⁹ U.S. Environmental Protection Agency. (Last updated Mar. 4, 2025). What is Acid Rain?, <https://www.epa.gov/acidrain/what-acid-rain>.

¹⁷⁰ <https://www.epa.gov/visibility/basic-information-about-visibility>.

¹⁷¹ H.R. Rep. No. 95–294 at 185–86, 188–89, 190–93.

¹⁷² U.S. Environmental Protection Agency. (Last updated Jan. 2012). Benzene Hazard Summary. <https://www.epa.gov/sites/default/files/2016-09/documents/benzene.pdf>. Benzene is listed as a hazardous air pollutant under CAA section 112(b)(1).

¹⁷³ Rep. Dingell, who is considered one of the co-authors of the 1990 CAA Amendments and who also served in Congress during the 1970 and 1977 CAA Amendments, stated that treating GHGs as air pollutants under the CAA “is not what was intended by the Congress.” He added that:

[A]s a matter of national policy, it seems to me to be insane that we would be talking about leaving this kind of judgment [*i.e.*, the regulation of greenhouse gases], which everybody tells us has to be addressed with great immediacy, to a long and complex process of regulatory action, litigation upon litigation, and a lack of any kind of speedy resolution to the concerns we have about the issue of global warming. Structuring a comprehensive climate change program is a responsibility for the Congress.

He'd before the Subcomm. on Energy & Air Quality, House Comm. on Energy & Commerce (110th Cong. Apr. 10, 2008), available at <https://www.congress.gov/110/chr/CHRG-110hrg51574/CHRG-110hrg51574.pdf>.

¹⁷⁴ Congress has provided for other, non-regulatory (*i.e.*, not emissions standards) mechanisms under title I of the CAA to address GHG emissions, such as grant and fee programs designed to reduce emissions. *See, e.g.*, CAA section 135 (low emissions electricity program provides funding for efforts related to GHG reductions), CAA section 132 (establishing grant and rebate program for heavy duty, zero-emission vehicles).

through local or regional exposure. Thus, the EPA proposes to interpret “air pollution” in CAA section 111 as that which itself adversely impacts health or welfare through local or regional exposure.

This proposed interpretation is buttressed by the Supreme Court’s understanding of the role of CAA section 111, and in particular section 111(d), in the overarching air pollution control strategy of title I of the CAA. In *West Virginia*, the Court explained that CAA section 111 is one of the “three main regulatory programs to control air pollution from stationary sources such as power plants,” 597 U.S. at 707, the other two being the NAAQS program and the NESHAP program. The Court went on to contextualize section 111 by providing background on the two other programs, *id.*, thus reinforcing the EPA’s understanding that Congress intended these three programs to work together to effectuate a common statutory scheme—one that addresses air pollutants and air pollution that adverse impacts health or welfare through direct exposure at the local or regional level.

The *West Virginia* Court also discussed CAA section 111(d), which authorizes regulation of certain emissions from existing sources. Regulation of new sources to address emissions of a particular pollutant under CAA section 111(b)(1)(B) triggers the EPA’s authority to regulate emissions of that same pollutant from existing sources, but only if the pollutant is not already regulated under the NAAQS or NESHAP programs. 597 U.S. at 710. The Supreme Court described CAA section 111(d) as a “gap-filler”—a rarely-invoked ancillary provision of limited scope that cannot be used to expand the EPA’s authority. *Id.* at 748–49.

The EPA requests comment on its proposed interpretation that CAA section 111(b)(1)(A) is best read as authorizing the Agency to regulate source category emissions that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare through local or regional exposure. We also request comment on our proposed use of the statutory and legislative history of CAA section 111 and its relationship to CAA sections 107–110 and 112. Finally, we request comment on whether the Supreme Court’s characterization of CAA section 111(d) in *West Virginia* supports the proposed interpretation that particular provisions of CAA section 111 cannot be used to expand the EPA’s authority under title I generally.

c. A Limiting Construction of CAA Section 111(b)(1)(A) Is Necessary To Avoid Impermissible Results

The EPA proposes that interpreting CAA section 111(b)(1)(A) as not permitting regulation of fossil fuel-fired power plants based on global climate change concerns is necessary to avoid acting outside the scope of the Agency’s authority. This consideration stems from the structure of CAA section 111, which bifurcates source category listing (the trigger for regulation) and standard setting (the regulation). Without a limiting interpretation of the air pollution addressed by CAA section 111, the EPA could decide to regulate a source category based on a global concern when there is little or no connection between a source category’s emissions and the identified harm. The Agency could then promulgate standards of performance under CAA section 111(a)(1) for any reason so long as the standards also reduce emissions, even if those standards would do nothing to meaningfully address the harm.

The scope of permissible regulation under CAA section 111 is bounded by the source-category listing inquiry governed by CAA section 111(b)(1)(A). To avoid the EPA promulgating standards of performance for reasons divorced from the purpose or goal of regulation under CAA section 111, and also to avoid the potential for conflict with the nondelegation doctrine, the Agency proposes that the “air pollution” addressed in CAA section 111(b)(1)(A) must be limited to that which endangers public health or welfare through local or regional exposure. Because Congress cannot delegate legislative powers to the Executive Branch, statutes granting an agency regulatory authority must provide an intelligible principle to guide its exercise.¹⁷⁵ Under an interpretation that does not require a sufficiently close connection between emissions and dangerous air pollution, the EPA’s authority to regulate would have no readily discernible limiting principle. The EPA would be permitted to promulgate standards of performance under CAA section 111 for any purpose and to meet any policy objective, so long as those standards also have the effect of reducing emissions. Such an exercise of authority would allow the EPA to redefine the objectives of the regulatory scheme and would be inconsistent with Congress’s legislative prerogatives. Instead, under the EPA’s

proposed interpretation, the scope of “air pollution” sets the outer bounds for permissible regulation of a source category. That is, because the EPA can only regulate a source category with respect to air pollution that endangers through local or regional exposure, the emission reductions obtained through standards of performance will rightly be directed towards achieving the purpose of mitigating the harm that results or may result from that local or regional exposure.

The Supreme Court’s decision in *West Virginia* provides an example of the potential result of an unbounded construction of CAA section 111(b)(1)(A), *i.e.*, of an interpretation that does not limit the EPA to regulating to address air pollution which may reasonably be anticipated to endanger public health or welfare through local or regional exposure. In *West Virginia*, the Court stated that the EPA cannot regulate fossil fuel-fired power plants for the impermissible purpose of shifting generation to cleaner sources of electricity.¹⁷⁶ The EPA assumed, in the 2015 CPP, that generation shifting was within its section 111 authority because it would reduce emissions of GHGs from fossil fuel-fired power plants. Had the EPA limited its approach to regulating fossil fuel-fired power plants to circumstances in which there is a closer connection between the emissions and the identified harm, it would have been clear that generation shifting did not achieve a purpose within the scope of CAA section 111 and was thus an impermissible use of its authority.

The EPA is further proposing that a limitless construction of CAA section 111(b)(1)(A) cannot be reconciled with the Supreme Court’s instructions regarding the scope of agency authority in *Loper Bright*. Statutes have a single, best meaning, fixed at the time of enactment, that may include “a degree of discretion.” 603 U.S. at 369. Such discretion does not extend to redefining statutory terms in a manner inconsistent with ordinary meaning. Although “Congress has often enacted” statutes that “expressly delegate[.]” to an agency the authority to give meaning to a particular statutory term,” *id.* at 394–95 (quoting *Batterton v. Francis*, 432 U.S. 416, 425 (1977)), there is no such express delegation in CAA section 111(b)(1)(A).¹⁷⁷ Nor can extending CAA

¹⁷⁶ See, e.g., 597 U.S. at 732 (finding no clear congressional authorization under CAA section 111 empowering the EPA to regulate by “devis[ing] carbon caps based on a generation shifting approach”).

¹⁷⁷ See, e.g., *Batterton*, 432 U.S. at 417 n.2 (interpreting statutory phrase “by reason of the

¹⁷⁵ See, e.g., *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 672–73 (2025).

section 111(b)(1)(A) to the regulation of GHGs in response to global climate change concerns plausibly be understood as “‘fill[ing] up the details’ of a statutory scheme.” *Id.* (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 43 (1825)). And “air pollution” is not a discretion-conferring “term or phrase that ‘leaves agencies with flexibility, such as ‘appropriate’ or ‘reasonable.’” *Id.* (quoting *Michigan*, 576 U.S. at 752). Under these circumstances, the ordinary meaning of “air pollution” controls. The EPA has a degree of discretion in identifying and regulating emissions that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. But that discretion does not extend to redefining “air pollution” from the local and regional exposure problems understood at the time of enactment and addressed throughout the statute to global climate change concerns.¹⁷⁸

The EPA’s approach to construing CAA section 111(b)(1)(A), as well as our proposed interpretation of that provision, are supported by the Supreme Court’s recent decision in *Louisiana v. Callais*, 146 S. Ct. 1131, 1153–54 (2026). The EPA has proposed to determine the best reading of the statute based on an analysis of the relevant statutory terms, both in isolation and within the broader statutory and legislative context. The EPA is further proposing that its interpretation is necessary to avoid an unconstitutional delegation of legislative power, which would

unemployment (as determined in accordance with standards prescribed by the Secretary)”; 42 U.S.C. 7410(m) (authorizing the application of sanctions under certain conditions “in relation to any plan or plan item (as that term is defined by the Administrator)”) (emphasis added); 7411(i) (excluding from certain stationary source regulations “country elevators (as defined by the Administrator)”) (emphasis added); 33 U.S.C. 1311(b)(1)(A) (requiring application of “the best practicable control technology currently available as defined by the Administrator”) (emphasis added).

¹⁷⁸ In reaching this conclusion, we are mindful that the Sixth Circuit applied *Loper Bright* to hold that the FCC exceeded its statutory authority in a 2024 order that subjected broadband internet service providers to “net-neutrality principles.” *Ohio Telecom Ass’n v. FCC*, 124 F.4th 993, 997 (6th Cir. 2025). With respect to mobile broadband, the FCC had interpreted “the public switched network” to include not only the traditional telephone numbers comprising the network at the time the statute was enacted, but also public internet protocol (“IP”) addresses. *Id.* at 1011. The court rejected this approach, holding as a matter of statutory interpretation that “delegation is not unfettered” and that “nothing in the statute . . . permits the FCC to effectively change the statute’s original meaning of ‘the public switched network’ . . . by adding ‘public IP addresses’ to adapt to new technology.” *Id.* at 1012 (citing *Loper Bright*, 603 U.S. at 395).

otherwise result by allowing the Agency to regulate source categories divorced from the achievement of a legitimate statutory goal.

Recent decisions by the D.C. Circuit also confirm this approach. In *IGas Holdings, Inc. v. EPA*, the D.C. Circuit analyzed a statutory provision to determine whether Congress had provided an intelligible principle to guide the EPA’s exercise of discretion.¹⁷⁹ Just as with our current inquiry into the scope of authority afforded by CAA section 111(b)(1)(A), the court in *IGas Holdings* was concerned with the boundaries of the EPA’s discretion, in that case under the American Innovation and Manufacturing (AIM) Act. There, the Court looked to “[t]he Act’s text, structure, and history”¹⁸⁰ to inform its assessment of the scope of the delegation to the EPA, explaining that “we do not confine ourselves to the isolated phrase in question, but utilize all the tools of statutory construction, including the statutory context and, when appropriate, the factual background of the statute”¹⁸¹ Likewise, the EPA here looks to the structure and history of CAA section 111, the context provided by title I of the CAA, and the text of the statute in proposing to delineate the scope of the EPA’s authority under CAA section 111(b)(1)(A). In *IGas Holdings*, the Court noted that, “to the extent the AIM Act is susceptible to more than one plausible construction, the EPA should read the statute to avoid granting discretion that is so broad that it could create a nondelegation problem.”¹⁸² As discussed in this section of the preamble, the interpretation of CAA section 111(b)(1)(A) that the EPA is proposing is necessary to avoid a nondelegation problem that could otherwise arise by giving the Agency authority to regulate stationary sources without an intelligible principle.

The EPA requests comment on its proposal that a limiting construction of CAA section 111(b)(1)(A) with respect to the “air pollution” addressed is necessary to avoid the Agency acting outside its scope of authority. In particular, the Agency requests input on its proposal that the cognizable “air pollution” must be that which itself endangers through local or regional exposure to avoid potential conflict

with the nondelegation doctrine. The EPA also requests comment on its proposal that a limitless construction of CAA section 111(b)(1)(A) cannot be reconciled with *Loper Bright* because that statutory provision does not confer discretion to redefine “air pollution” from the local and regional exposure problems understood at the time of its enactment.

d. The Futility of Regulating GHG Emissions From Fossil Fuel-Fired Power Plants Supports Interpreting CAA Section 111(b)(1)(A) As Not Encompassing Global Climate Change Concerns

The EPA proposes that our separate futility analysis in section V.C further supports the conclusion that “air pollution” within CAA section 111(b)(1)(A) does not include global climate change concerns. Under section 111(b)(1)(A), a source category must contribute “significantly” to adverse public health and welfare impacts to be listed. Correspondingly, the effect of regulation of that source category on the adverse impacts resulting from the air pollution of interest must be something appreciably more than *de minimis*. That is, the effect of regulating the source category must exhibit a degree of significance. Instead, the climate modeling described in section V.C demonstrates that removing *all* GHG emissions from fossil fuel-fired power plants (which is much more than the regulations we propose to repeal would do if fully implemented) would not materially address (*i.e.*, beyond a *de minimis* level) the health and welfare dangers attributed to global climate change concerns. Congress’s use of “significantly” in CAA section 111(b)(1)(A) indicates that it intended the Agency to regulate under that section when doing so would have a relatively large impact on the danger; the scale of the potential harm reduction revealed in the proposed modeling analysis, however, does not meet that threshold level of significance. Thus, we propose that this analysis further supports our proposed conclusion that Congress did not intend for CAA section 111(b)(1)(A) to reach global climate change concerns.

The EPA requests comment on its proposal that the futility of regulating GHG emissions from fossil fuel-fired power plants supports its interpretation that CAA section 111(b)(1)(A) does not authorize such regulation based on global climate change concerns.

¹⁷⁹ 146 F.4th 1126 (D.C. Cir. 2025), *cert. denied*, 2026 U.S. LEXIS 2567 (U.S. Jun. 22, 2026) (No. 25–1079).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 1138 (citing *Owens v. Republic of Sudan*, 531 F.3d 884, 890 (D.C. Cir. 2008) (internal quotations omitted)).

¹⁸² *Id.* at 1139 n.3.

e. The EPA's Proposed Interpretation Is Consistent With Relevant Caselaw

The EPA proposes that the interpretation of CAA section 111 set out above is, at minimum, not foreclosed by *Massachusetts*, *AEP*, *American Lung Association*, or *West Virginia*. These cases addressed distinct questions and, in important respects, support the EPA's authority and obligation to determine whether GHG emissions from power plants satisfy the statute's prerequisites for imposing regulation.

In *Massachusetts*, the Supreme Court rejected the argument that GHGs are not "air pollutants" under the Act-wide definition, reasoning that CAA section 302(g)'s use of the word "any" in connection with "air pollutant agent or combination of such agents, including any physical [or] chemical . . . substance" was sufficiently broad to encapsulate the combination of GHGs at issue. 549 U.S. at 530. On this basis, the Court stated that the EPA "has the statutory authority to regulate the emission of such gases from new motor vehicles." *Id.* at 532. However, *Massachusetts* did not address the question whether "air pollution" can be interpreted to include elevated concentrations of GHGs in the atmosphere. That is, the Court did not consider whether the Act-wide definition of "air pollutant" in CAA section 302(g) necessarily means that GHGs are also cognizable air pollution under any of the Act's provisions, nor did it hold that such emissions meet any of the statutory standards for regulation in the Act. And, critically, the *Massachusetts* Court was analyzing a petition for rulemaking under CAA section 202(a)(1),¹⁸³ which differs from CAA section 111(b)(1)(A) in several ways that would bear on any questions of statutory interpretation. For example, under CAA section 202(a)(1), the EPA makes endangerment and contribution findings to regulate additional air pollutants emitted from new motor vehicles or motor vehicle engines. In contrast, under CAA section 111(b)(1)(A), the findings serve the purpose of including a source category on a list that subjects sources in the category to certain regulations. Additionally, CAA section 111(b)(1)(A) requires the Administrator to find that a source category contributes significantly to dangerous air pollution,

whereas CAA section 202(a)(1) requires only that a class of new motor vehicles or engines contribute to such air pollution. And finally, CAA section 202(a)(1) requires the EPA to make endangerment and contribution findings and prescribe standards applicable to the emission of the relevant air pollutants in a single step, whereas CAA section 111 bifurcates the findings under section 111(b)(1)(A) and promulgation of standards of performance under sections 111(b)(1)(B) and 111(a)(1).

Further, *Massachusetts* must be read in harmony with *UARG*, in which the Supreme Court held that the EPA exceeded its authority under the CAA in its approach to extending stationary source permitting to cover GHG emissions. In doing so, the Court held that "while *Massachusetts* rejected EPA's categorical contention that greenhouse gases *could not* be 'air pollutants' for any purposes of the Act, it did not embrace EPA's current, equally categorical position that greenhouse gases *must* be air pollutants for all purposes regardless of the statutory context," *id.* at 319 (citation omitted). Rather, "*Massachusetts* does not foreclose the Agency's use of statutory context to infer that certain of the Act's provisions use 'air pollutant' to denote not every conceivable airborne substance, but only those that may sensibly be encompassed within the particular regulatory program." *Id.* *UARG* thus makes clear that the EPA's authority to regulate an "air pollutant" must be evaluated in the context of the particular statutory provision that confers authority to regulate, and, notably, the Court has not yet had cause to analyze the term "air pollution" in the context of CAA section 111(b)(1)(A).

The EPA believes its approach to evaluating key terms in context is supported by the Supreme Court's recent decision in *Sackett v. EPA*, 598 U.S. 651 (2023). There, the Court analyzed the term "adjacent" in Clean Water Act section 404(g)(1),¹⁸⁴ which provides that wetlands "adjacent" to traditional "navigable waters" can be part of certain permitting programs. Although the term "adjacent" could be interpreted narrowly or broadly, the Court emphasized that sound statutory interpretation required more than relying on "the outer limits of [that] word's definitional possibilities," *id.* at 676 (quoting *FCC v. AT&T Inc.*, 562 U.S. 397, 407 (2011)), and construed

"adjacent" in the context of "the rest of the law," *id.* (quoting *United Dav. Assn of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988)). Similarly here, and consistent with *UARG*, the EPA proposes that the term "air pollution" in CAA section 111(b)(1)(A) cannot be interpreted broadly in isolation and does not confer unfettered discretion. Rather, the term must be read in the statutory context in which it appears.

In *AEP*, the Supreme Court addressed whether litigants could use Federal common law to secure judicial regulation of GHG emissions from power plants. The Court held that they could not, explaining that CAA section 111 displaces the Federal common law by vesting the decision "whether and how" to regulate such emissions in the EPA. 564 U.S. at 429. In reaching this conclusion, the Court emphasized that EPA, as the expert agency, had the necessary expertise and resources to make the necessary determinations in the first instance. *Id.* at 412.

In *American Lung Association*, the D.C. Circuit read this holding broadly, stating that the *AEP* Court spoke definitively to the question whether the EPA may or must regulate GHG emissions from existing fossil fuel-fired power plants under CAA section 111(d). 985 F.3d at 988 (quoting *AEP*, 564 U.S. at 424). However, the Supreme Court disagreed with this reasoning in *West Virginia*, clarifying that *AEP* addressed "whether Congress wanted district court judges to decide, under unwritten federal nuisance law, 'whether and how to regulate carbon dioxide emissions from power plants.'" 597 U.S. at 712 (quoting *AEP*, 564 U.S. at 410). The EPA proposes that these cases provide that the CAA speaks directly to emissions from power plants for the purpose of analyzing whether the Act displaces Federal common-law claims, and that CAA section 111 delegates to the Agency the decision "whether and how" to regulate GHG emissions from power plants. None of these cases addresses the EPA's determination in the 2015 Findings, issued several years after *AEP* and not presented for decision in *West Virginia*, that GHG emissions from power plants satisfy the statutory standard for regulation in CAA section 111(b)(1)(A).

The EPA requests comment on its proposed interpretations and applications of *Massachusetts*, *AEP*, *American Lung Association*, and *West Virginia* to the question whether CAA section 111(b)(1)(A) authorizes the EPA to regulate GHG emissions from fossil fuel-fired power plants based on global climate change concerns.

¹⁸³ The Court emphasized that its review of the denial of the rulemaking petition was "extremely limited" and concluded its opinion by clarifying that it "need not and do[es] not reach the question whether on remand EPA must make an endangerment finding." 549 U.S. at 527, 534.

¹⁸⁴ 33 U.S.C. 1344(g)(1). The term "navigable waters" is generally defined throughout the Clean Water Act as "waters of the United States, including the territorial seas." *Id.* 1362(7).

2. Flaws in the 2015 Findings Render Them Unlawful

The EPA further proposes that regardless whether CAA section 111 authorizes the regulation of GHG emissions from power plants in response to global climate change concerns, the Agency did not properly exercise that authority in the 2015 Findings. We propose that two flaws, both independently and collectively, render the 2015 Findings ineffective and the GHG regulations in 40 CFR part 60, subparts TTTT and TTTTa unlawful.

a. The EPA Erred in Combining Two Source Categories Without Undertaking a New Listing Under CAA section 111(b)(1)(A)

Prior to the 2015 NSPS, the EPA had, under CAA section 111(b)(1)(A), listed two separate source categories that included fossil fuel-fired electricity generating sources—steam generators and combustion turbines—and promulgated separate NSPS for non-GHG emissions from those source categories.¹⁸⁵ In the 2015 NSPS, the EPA combined parts of the two source categories into a single source category, which it termed “fossil fuel-fired electricity generating units,” solely for the purpose of regulating GHG emissions. We did not otherwise revise the prior source category listings or the promulgated NSPS and stated that combining the source categories in this fashion did not constitute a listing of a new source category under CAA section 111(b)(1)(A). We then proceeded to promulgate standards for GHG emissions from fossil fuel-fired power plants in the newly created source category under CAA section 111(b)(1)(B).

The EPA is now proposing to determine that combining parts of the two source categories for the purpose of regulating GHG emissions constituted the creation of a new source category for purposes of regulation under CAA section 111. In the 2015 NSPS, the EPA identified electricity generating fossil fuel-fired steam generating units and electricity generating fossil fuel-fired stationary combustion turbines as a single source category for the purpose of regulating GHG emissions from that

universe of sources. In doing so, the EPA created a new source category that should have been listed pursuant to CAA section 111(b)(1)(A), which would have required the Agency to determine that GHGs emitted from the source category cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA purported to make such a determination in the alternative. 80 FR 64530–31. However, the EPA is now proposing that the determination in the alternative was flawed because it attempted to demonstrate endangerment based on global climate change concerns as analyzed for CAA section 202(a)(1) purposes in the 2009 Endangerment Finding and subsequent reconsideration denials. The end result is that the Agency failed to properly list the newly created source category and also failed to make a sufficient finding that GHG emissions from fossil fuel-fired power plants cause or contribute significantly to dangerous air pollution—*i.e.*, air pollution that endangers through local or regional exposure.

Thus, the EPA is proposing to conclude that it erred in the 2015 NSPS when it took the position that it had not created a new source category, and that this error renders the regulations promulgated pursuant to CAA section 111(b)(1)(B) without an adequate legal basis.

b. Rescission of the 2009 Endangerment Finding Abrogates the Basis and Interpretations Underlying the 2015 Findings

Both the EPA’s purported “rational basis” for regulating GHG emissions from fossil fuel-fired power plants and the findings in the alternative in the 2015 NSPS relied on the legal interpretations and approach embedded in the 2009 Endangerment Finding with respect to CAA section 202(a)(1). In the 2015 Findings, the EPA explained that “our approach here—reflected in the information and conclusions [regarding the EPA’s bases for regulating GHG emissions] described above—is substantially similar to that reflected in the 2009 Endangerment Finding and the 2010 denial of petitions to reconsider.” 80 FR 64531. We believed at the time that this reliance made sense given what we assumed to be similarities between CAA section 202(a)(1) and CAA section 111(b)(1)(A). Both provisions require the EPA to undertake certain actions—under section 202(a)(1), prescribing emission standards, and under section 111(b)(1)(A), listing a source category—if the Administrator determines the sources at issue cause or contribute to

air pollution which may reasonably be anticipated to endanger public health or welfare.¹⁸⁶

More specifically, the 2015 Findings relied on the EPA’s interpretation of this phrase in the 2009 Endangerment Finding, including that the scope of the term “air pollutant” as determined by the Supreme Court in *Massachusetts* necessarily defines the scope of “air pollution” as used in CAA sections 202(a)(1) and 111(b)(1)(A); that the contribution to air pollution and the endangerment resulting from the air pollution are evaluated in two separate steps; and that the adverse impacts of global climate change are cognizable under CAA sections 202(a)(1) and 111(b)(1)(A) despite not being associated with local or regional exposure.¹⁸⁷ Additionally, the 2015 Findings adopted the EPA’s approach in the 2009 Endangerment Finding to characterizing the six globally well-mixed components of the GHG “air pollutant” and “air pollution” and to evaluating endangerment and contribution. The EPA proposes that, because the 2015 Findings relied on the interpretations in and approach of the 2009 Endangerment Finding rather than independently interpreting and applying CAA section 111(b)(1)(A), the rescission of the 2009 Endangerment Finding in February 2026 abrogates the legal foundation of the 2015 Findings. Separately, the EPA proposes that CAA section 111(b)(1)(A) does not permit the EPA to regulate GHGs from fossil fuel-fired power plants for many of the same reasons that CAA section 202(a)(1) does not allow the Agency to regulate GHGs from new motor vehicles or new motor vehicle engines. These reasons are detailed in section V.A.1 of this preamble.

The EPA is also proposing to find that an additional error committed in the 2009 Endangerment Finding was carried over to the 2015 Findings and provides a further basis for rescission of the 2015 Findings and repeal of all associated regulations. In the 2009 Endangerment Finding, the Administrator made two distinct findings based on two distinct

¹⁸⁵ See 36 FR 5931 (Mar. 31, 1971) (listing “fossil fuel-fired steam generators”); 42 FR 53657 (Oct. 3, 1977) (listing “stationary gas turbines,” *i.e.*, stationary combustion turbines, based on NOX and SO₂ emissions); see also 36 FR 24876 (Dec. 23, 1971) (promulgating standards for emissions of PM, SO₂ and NOX from fossil fuel-fired steam generators under 40 CFR 60 subpart D); 44 FR 52792 (Sept. 10, 1979) (promulgating standards for emissions of SO₂ and NOX from combustion turbines under 40 CFR 60 subpart GG).

¹⁸⁶ Notably, as discussed above, CAA section 111(b)(1)(A) provides that a source category must contribute *significantly* to air pollution which may reasonably be anticipated to endanger public health or welfare.

¹⁸⁷ See, *e.g.*, Response to Comments for New EGUs—Chapter 4—Endangerment and Climate Science, 2015 NSPS, Document EPA–HQ–OAR–2013–0495 at 4–30 (explaining that the EPA based the 2015 Findings on information and analysis in the 2009 Endangerment Finding, coupled with more recent information included in the 2015 NSPS) and 4–31 (asserting that judicial decisions bearing on the 2009 Endangerment Finding also apply to the 2015 Findings); see also 80 FR 64510, 64530–31.

sets of assumptions. The Administrator first found that the “air pollution,” defined as the combined global concentrations in the upper atmosphere of six “well-mixed GHGs,” endangered public health or welfare by playing a causal role in global temperature increases, sea level rise, and other phenomena (including ocean pH changes), which, in turn, were then asserted to play a causal role in environmental phenomena with adverse impacts on public health and welfare. 74 FR 66516. In the second finding, the Administrator found that the quantity of the “air pollutant” (defined as the combination of same six “well-mixed GHGs”) emitted by new motor vehicles and engines annually contributed to the “air pollution.” 74 FR 66536. The Administrator did not consider the extent to which emissions from CAA section 202(a)(1) sources have a more than *de minimis* effect on the danger identified with respect to elevated concentrations of GHGs in the upper atmosphere—let alone whether emissions from any particular class or classes of sources that the EPA intended to regulate had such an effect. Nor did the Administrator recognize the mismatch between “air pollution” consisting of global concentrations formed by GHG emissions past, present, and future and “air pollutant” emissions from new motor vehicles and engines on an annual basis, or the problems associated with measuring domestic contribution against an air pollution problem that necessarily requires global emissions to result in the identified danger. In the Endangerment Finding Rescission, the EPA interpreted CAA section 202(a)(1) as requiring the Agency to consider whether source emissions cause or contribute to air pollution and whether that air pollution poses endangerment in a single causal chain.¹⁸⁸

The 2015 Findings took the same approach as the 2009 Endangerment Finding. In 2015, the EPA severed the endangerment and significant contribution inquiries, first adopting prior findings that GHGs endanger public health or welfare, and then considering in the alternative whether CO₂ emissions from fossil fuel-fired power plants contribute significantly to GHG air pollution. 80 FR 64530.¹⁸⁹ Notably, in assessing contribution, we focused on the amount of GHG emissions from the source category,

stating that “fossil fuel-fired EGUs emit almost one-third of all U.S. GHG emissions, and are responsible for almost three times as much as the emissions from the next ten stationary source categories combined.” 80 FR 64531. The EPA is now proposing that this approach was inconsistent with the language of CAA section 111(b)(1)(A) and the structure of the CAA, which requires making distinct findings for regulating distinct types of emission sources and authorizes different regulatory tools when such thresholds are met. The CAA sets out distinct thresholds for regulating and distinct modes of regulation for various types of sources, including new motor vehicles and engines, vehicles in use, and aircraft engines, and separately addresses when and how to respond to international emissions that impact the United States. However, the EPA’s approach to endangerment effectively attributed all GHG emissions coming from all of these various distinct sources within the United States, as well as from all international sources, to fossil fuel-fired power plants. Although the statute anticipates that “air pollution” may reflect contributions from multiple source categories, interpreting CAA section 111(b)(1)(A) as extending to global climate change concerns results in an approach to endangerment that impermissibly sweeps in emissions from source categories far beyond the reach of CAA section 111.

Whereas the “air pollution” identified in the 2015 Findings led to endangerment because of the sum total of all emissions, past, current, and projected, from all source categories foreign and domestic, the identified contribution from fossil fuel-fired power plants was measured in annual terms. That is, the 2015 Findings compared the wrong figures in tying significant contribution to endangerment. The EPA found that fossil fuel-fired power plants contribute significantly because they emitted almost one-third of all U.S. GHG emissions in 2013. But the EPA characterized the “air pollution” that endangers in different terms—total global concentrations of the six well-mixed GHGs in the atmosphere. Thus, there was a conceptual mismatch—a fundamental disconnect—between the “air pollution” that the EPA found to endanger and the annual streams of emissions that were said to contribute to that air pollution. This mismatch is not presented when analyzing the air pollution that the EPA proposes to interpret CAA section 111 as authorizing the Agency to regulate because the mechanism of harm from

that type of air pollution does not depend on global concentrations or centuries-long time horizons. Annual emissions of airborne lead, for example, are readily measurable against the total annual concentrations of airborne lead in areas of concern, and the health and welfare impacts of air pollution in the form of airborne lead can be analyzed on the same scale. By completely severing the contribution and endangerment analyses for the six “well-mixed” GHGs, the 2015 Findings avoided grappling with this disconnect. The difficulties in analyzing the nexus between contribution and endangerment is not a problem to be avoided, but a further reason to propose that CAA section 111(b)(1)(A) was not designed to address global climate change concerns.

Similarly, the 2015 Findings also defined the relevant “air pollution” as the combined global concentration of six well-mixed GHGs, but found that fossil fuel-fired power plants only emitted, for all intents and purposes, one of them: CO₂. 80 FR 64531 n.110. As a result, the “air pollution” defined as endangering public health or welfare included at least five additional gases that were not relevant to and not included in the EPA’s significant contribution evaluation in the alternative. This difference is material, given that each of the five GHGs *not* emitted in material quantities by fossil fuel-fired power plants has a higher global warming potential—in some cases much higher—than CO₂.¹⁹⁰ This additional mismatch is further evidence that the 2015 Findings misapplied the statute and cannot stand.

The EPA further proposes that severing the endangerment and cause or contribution analyses leads to untenable results and lacks any limiting principle. To illustrate the problem, severing these inquiries would allow the EPA to issue standards of performance for water vapor (H₂O), another substance emitted by fossil fuel-fired power plants that is also considered a GHG. Considered in isolation, increased H₂O concentrations in the atmosphere from all human activities could be said to endanger public health or welfare by resulting in rain that leads to slip-and-fall injuries, drownings, and damage to crops, livestock, and property, including through pools, rivers, and floodwater, although water vapor is not itself harmful and is necessary to sustain life. Also considered in isolation, and using the approach taken in the 2015

¹⁸⁸ 91 FR 7719–20.

¹⁸⁹ See also 80 FR 64517–22 (discussing climate change impacts from GHG emissions), 64522–24 (discussing GHG emissions from fossil fuel-fired power plants).

¹⁹⁰ U.S. Environmental Protection Agency. Understanding Global Warming Potentials (last updated Dec. 29, 2025). <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

Findings, fossil fuel-fired power plants could be said to “contribute significantly” to elevated H₂O concentrations in the atmosphere from all anthropogenic sources, and these emissions of water vapor would thereby assertedly “contribute significantly” to global climate effects similar to those attributed to other GHGs. CAA section 111(b)(1)(A) does not contemplate prescribing emission standards for such an omnipresent, naturally occurring, and essential component of the ambient air because the text requires a unified analysis that ensures a nexus between the extent of contribution and the resulting danger. The logic of regulating water vapor appears absurd at first glance, but it is the same logic required to regulate GHGs under CAA section 111(b)(1)(A).

Severing the analysis of endangerment from the analysis of significant contribution produced a result that is incompatible with the statute. The practical effect of severance is that even a trivial or *de minimis* contribution to elevated GHG concentrations by CAA section 111 sources would be sufficient to trigger regulation. The language of CAA section 111(b)(1)(A) provides that a source category must “cause[] or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA proposes that the phrase “air pollution which may reasonably be anticipated to endanger public health or welfare” must be read as a whole, such that the relevant consideration is a source category’s contribution to endangerment, rather than only to air pollution. This proposed interpretation is supported by the legislative history of CAA section 111, in which Congress described this section as addressing source categories the emissions from which “may contribute substantially to endangerment of the public health or welfare.”¹⁹¹

Moreover, CAA section 111(b)(1)(A) requires that a source category contribute *significantly* to air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA proposes that the deliberate inclusion of this qualifier reinforces that Congress expected there to be a strong connection between a source category’s contribution to an air pollution problem and the danger posed by that air pollution. That is, the EPA believes “significantly” strengthens the through-line between contribution and endangerment such that a source

category must have a relatively large contribution to the danger. As discussed in section V.C.3. of this preamble, due to the relationship between GHG emissions from any particular source category and global climate change, even the complete elimination of GHG emissions from a source category would not materially address (*i.e.*, beyond a *de minimis* level) the public health and welfare dangers attributed to global climate change. Such an impact falls well short of CAA section 111(b)(1)(A)’s “contributes *significantly*” threshold. The EPA proposes that this result is further evidence that severing the contributes significantly and endangerment inquiries is inconsistent with the statutory scheme.

The EPA requests comment on its proposal that rescission of the 2009 Endangerment Finding under CAA section 202(a)(1) nullifies the 2015 Findings by removing their legal and analytical foundation. The EPA also seeks comment on the proposal that the Agency erred in the 2015 Findings by severing the endangerment and significant contribution findings, and that CAA section 111(b)(1)(A) requires us to consider endangerment and significant contribution in a single causal chain. More specifically, the EPA is requesting comment on its proposed interpretation that the mismatch in the geographic and temporal scales and the units used to evaluate endangerment and significant contribution render the 2015 Findings flawed and insupportable. The EPA additionally seeks comment on our proposals that severing endangerment and significant contribution leads to untenable results and lacks a limiting principle and that CAA section 111(b)(1)(A)’s requirement that a source category contribute “significantly” to endangerment is additional evidence that Congress intended there to be a strong connection between a source category’s contribution to air pollution and the danger posed by that air pollution.

B. Lack of Clear Congressional Authorization

The EPA is further proposing that the Agency lacks the “clear congressional authorization” required under the major questions doctrine to decide the Nation’s response to global climate change concerns through application of CAA section 111. *West Virginia*, 597 U.S. at 723 (quoting *UARG*, 573 U.S. at 324). In this subsection, the EPA proposes that even if CAA section 111(b)(1)(A) could plausibly be read as authorizing the Agency to subject power plant emissions to regulatory controls based on global climate change

concerns, the major questions doctrine requires more than a plausible textual basis for asserting such authority. First, the EPA proposes that the major questions doctrine applies to the 2015 Findings and associated regulations because the scope of authority the Agency asserted in 2015 to respond to global climate change concerns presents a major question of political and economic significance. Next, the EPA proposes that Congress did not clearly authorize the Agency to assert such authority in applying the standard for regulation in CAA section 111(b)(1)(A), or in any other provision of the Act. The general nature of the statutory text and the more specific authorities provided to address global concerns elsewhere in the CAA indicate that Congress knew how to expressly authorize the regulation of emissions to address unique and global problems and did not do so with respect to GHG emissions from power plants and global climate change. As a result, the EPA proposes that the 2015 Findings exceeded our statutory authority and should be rescinded and that associated regulatory requirements in the 2015 NSPS and 2024 CPS must be repealed.

This proposal follows from the Supreme Court’s decisions in *UARG* and *West Virginia* and is consistent with *Massachusetts*. Additionally, this proposal is not precluded by *AEP*, which held that the CAA displaces any Federal common-law claims that may otherwise have existed against power plant companies for their CO₂ emissions.

1. Applicability of the Major Questions Doctrine

In recent decisions construing the scope of the EPA’s statutory authority to regulate GHGs, the Supreme Court has emphasized that the “‘history and breadth of the authority’” asserted by the Agency and “‘the ‘economic and political significance’ of that assertion” provide “‘a reason to hesitate before concluding that Congress’ meant to confer such authority.’” *West Virginia*, 597 U.S. at 721 (quoting *Brown & Williamson*, 529 U.S. at 159–60); *accord UARG*, 573 U.S. at 324. The major questions doctrine requires “more than a merely plausible textual basis” when asserting authority to decide a significant policy issue on Congress’ behalf, *id.* at 723, regardless whether the doctrine is understood as an ordinary application of textualism that “‘situates text in context’”¹⁹² or a clear statement

¹⁹¹ H.R. Rep. No. 91–1146, at 10 (1970) (reporting H.R. 17255).

¹⁹² *Learning Res. Inc. v. Trump*, 607 U.S. 229, 300 (2026) (Barrett, J., concurring) (quoting *Biden v.*

rule that implements nondelegation and separation of power principles.¹⁹³

In *UARG*, the Supreme Court applied the major questions doctrine to reject the EPA's attempt to expand the number of stationary sources subject to PSD and title V permitting requirements based on their GHG emissions. 573 U.S. at 310–13. The Court held that the EPA had “exceeded its statutory authority when it interpreted the Clean Air Act to require PSD and Title V permitting for stationary sources based on their greenhouse gas emissions” and “may not treat greenhouse gases as a pollutant” in this PSD and Title V contexts. *Id.* at 333. The Court found that the Agency's statutory interpretation and related “tailoring rule” that exempted many sources to address workability concerns was “unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization.” *Id.* at 324. The Court noted that “a measure of skepticism” is required when “an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy.’” *id.* (quoting *Brown & Williamson*, 529 U.S. at 159), and that “[w]e expect Congress to speak clearly if it wishes to assign to an agency decisions of vast ‘economic and political significance.’” *id.* (quoting *Brown & Williamson*, 529 U.S. at 160). In sum, the Court “ruled that the term ‘air pollutant’ does not include greenhouse gases, even though greenhouse gases pollute the air.” *Learning Res. Inc., v. Trump*, 607 U.S. 229, 255 (2026) (Gorsuch, J. concurring) (citing *UARG*, 573 U.S. at 316, 323–24 (2014)).

In *West Virginia*, the Supreme Court again applied the major questions doctrine to reject the EPA's attempt to shift the power grid away from using fossil fuels through GHG emission guidelines for existing power plants under CAA section 111(d). 597 U.S. at 711–15. The Court noted that when interpreting an assertion of regulatory authority, the inquiry includes the question “whether Congress in fact meant to confer the power the agency has asserted.” *Id.* at 721. The Court explained that the major questions doctrine applies to extraordinary cases in which “the ‘history and breadth of the authority that [the agency] has

asserted,’ and the ‘economic and political significance’ of that assertion, provide ‘a reason to hesitate before concluding that Congress’ meant to confer such authority.’” *Id.* (quoting *Brown & Williamson*, 529 U.S. at 159–60). In such cases, “both separation of powers principles and a practical understanding of legislative intent make us ‘reluctant to read into ambiguous statutory text’ the delegation claimed to be lurking there,” and “[t]he agency instead must point to ‘clear congressional authorization’ for the power it claims.” *Id.* at 723 (quoting *UARG*, 573 U.S. at 324). Applying that standard, the Court held that the EPA's statutory authority to establish emission limits under CAA section 111(a)(1) and (d) “is not close to the sort of clear authorization required by our precedents.” *Id.* at 732.

The EPA proposes that the 2015 Findings implicate the major questions doctrine for many of the same reasons the Supreme Court applied it in *UARG* and *West Virginia*. By asserting authority to regulate GHG emissions from fossil fuel-fired power plants in response to global climate change concerns, the EPA “‘claim[ed] to discover in a long-extant statute an unheralded power’ representing a ‘transformative expansion in [its] regulatory authority.’” *West Virginia*, 597 U.S. at 724 (quoting *UARG*, 573 U.S. at 324). As discussed in section III of this preamble, the EPA departed from decades of established practice in 2015 when it asserted authority over GHG emissions from power plants driven by global climate change concerns, rather than the “air pollution” that the CAA instructs the Agency to address within the overall structure of title I. In doing so, the EPA expanded its authority in a novel and transformative way that resulted in over a decade of high-stakes litigation and tremendous regulatory uncertainty for the power sector and beyond. This proposal is reinforced by the types of controls that the EPA has historically required regulated entities to implement. The Agency's past statements and regulatory efforts demonstrate that the only way to meaningfully address GHG emissions from fossil fuel-fired power plants is by shifting the power sector away from fossil fuels. Thus, the 2015 CPP was expressly predicated on generation shifting, and the 2024 CPS included a retirement subcategory that incentivized voluntary retirement of fossil fuel-fired plants in favor of different forms of generation.

The EPA further proposes that it is “‘highly unlikely that Congress would leave’ to ‘agency discretion’ the

decision” of how power plants generate electricity. *West Virginia*, 597 U.S. at 729 (quoting *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 231 (1994)). As the Supreme Court noted with respect to coal-based electricity generation under section 111(d), such a policy decision involves “‘basic and consequential tradeoffs,’” and “‘Congress certainly has not conferred a like authority upon EPA anywhere else in the Clean Air Act.’” *Id.* The EPA proposes that the Court's conclusion under section 111(d) applies equally to our assertion of authority under section 111(b)(1)(A) in the 2015 Findings.

Before the 2015 Findings, “‘Congress considered and rejected’ multiple times” legislation that would have authorized or required the EPA to regulate GHG emissions. *West Virginia*, 597 U.S. at 731 (quoting *Brown & Williamson*, 529 U.S. at 144). As discussed above, Congress previously considered legislation that would have authorized or required the EPA to prescribe standards for GHG emissions. For example, the Safe Climate Act of 2007 would have adopted findings and policies with respect to limiting global temperature increase, required various forms of international cooperation, and added a new title VII to the CAA instructing the EPA to achieve phased GHG emission reduction targets and regulate GHG emissions of appropriate sectors or sources.¹⁹⁴ And, as the Court in *West Virginia* noted, the American Clean Energy and Security Act of 2009 would have required international cooperation and added new titles to the CAA requiring the EPA to, among other things, regulate GHG emissions from certain stationary sources under CAA section 111.¹⁹⁵ Neither bill was enacted through the legislative process, and Congress has since declined to adopt similar legislation.¹⁹⁶

When Congress has addressed GHGs individually or collectively, it has not done so through general grants of

¹⁹⁴ H.R. 1590, 110th Cong. (2007). This bill was presented in the House of Representatives and never received a vote.

¹⁹⁵ H.R. 2454, 111th Cong. (2009). This bill, introduced on May 15, 2009—a month after the EPA proposed the 2009 Endangerment Finding—passed the House of Representatives by a 219–212 margin on June 26, 2009, but never received a vote in the Senate. As noted previously, the President and Administrator at the time expressed a strong preference for legislation but also a willingness to resolve legislative inaction by administrative means, and the Agency ultimately finalized the Endangerment Finding on December 7, 2009.

¹⁹⁶ Congress's pattern of not providing the EPA such authority extends long before the 2009 Endangerment Finding and 2015 Findings, as noted previously. See *Coal. for Responsible Regulation*, 2012 U.S. App. LEXIS 25997, at *36–37 (Brown, J., dissenting from denial of *reh'g en banc*) (summarizing earlier legislative proposals).

Nebraska, 600 U.S. 477, 507 (2023) (Barrett, J., concurring)).

¹⁹³ *Learning Res. Inc.*, 607 U.S. at 279–80 (Gorsuch, J., concurring); *West Virginia*, 597 U.S. at 735–51 (Gorsuch, J., concurring).

authority, including the new titles enacted as part of the 1990 CAA Amendments and discussed above. As an additional example, Congress enacted a comprehensive phaseout scheme for HFCs in the 2020 AIM Act, which includes detailed instructions, timelines, and requirements for implementation and allows some uses to continue under certain conditions.¹⁹⁷ Congress also authorized a tax credit to incentivize underground sequestration that mitigates CO₂ emissions.¹⁹⁸ And Congress amended the CAA in 2021 through the 2022 IRA to require the Agency to establish a waste emissions charge for certain sources structured to incentivize methane emissions reductions over time.¹⁹⁹ When addressing GHGs and global climate change concerns more generally, Congress has used non-regulatory tools that incentivize changes in manufacturing and consumer choice, including through additional funding provisions in the IRA. Multiple instances of recent legislation addressing GHGs individually and through distinct regulatory approaches suggests that Congress views such policy decisions as economically and politically significant and not adequately addressed by general statutory authorities enacted in response to different problems.

As evidenced by Congress continuing to revise these air pollutant-specific measures and nonregulatory tools, there is an ongoing national debate over the appropriate response to global climate change concerns. The OBBBA repealed several relevant measures adopted in the IRA and rescinded the EPA's appropriations to carry out several funding programs related to GHG emissions.²⁰⁰ Among other things, Congress prohibited the Agency from collecting the waste emission charge for methane for ten years beyond the original statutory collection date, rescinded funding to administer grant programs in CAA sections 132 and 135–38, and repealed CAA section 134, which had included a section-specific definition of “greenhouse gas” applicable to the grant program set out in that section. This legislation, which was the product of substantial national debate and revised and rescinding funding for provisions of the IRA that were themselves the product of substantial national debate, indicates

that the EPA erred in attempting to resolve significant policy issues on its own accord in the 2015 Findings.

Congress has also recently disapproved several actions taken by the EPA with respect to GHG emissions. On May 19, 2025, President Trump signed into law a resolution adopted by Congress under the Congressional Review Act (CRA) to void our final rule implementing the waste emission charge added to the CAA in 2021.²⁰¹ And on June 12, 2025, President Trump signed into law three resolutions adopted by Congress under the CRA²⁰² to void waivers we granted under CAA section 209 that allowed California and participating States to enforce GHG emission regulations for motor vehicles and engines, up to and including zero-emission standards that mandated a shift to electric vehicles.²⁰³ These disapproval resolutions further demonstrate the economic and political significance of the EPA's GHG emission regulations and reinforce the understanding that Congress intends to reserve such major questions of policy for itself. See *West Virginia*, 597 U.S. at 731–32.

2. Lack of Clear Congressional Authorization

Under the major questions doctrine, the EPA proposes that the Agency lacks the “clear congressional authorization” required for the novel approach taken in the 2015 Findings and must rescind the 2015 Findings and remaining GHG emission regulations. *West Virginia*, 597 U.S. at 723 (quoting *UARG*, 573 U.S. at 324). The EPA proposes that CAA section 111(b)(1)(A) does not clearly authorize the regulation of GHG emissions from fossil fuel-fired power plants in response to global climate change concerns.

In *West Virginia*, the Supreme Court held that our authority under CAA section 111 “to establish emission caps at a level reflecting ‘the application of the best system of emission reduction . . . adequately demonstrated’ ” did not clearly authorize the EPA to issue

emission guidelines that addressed global climate change concerns by mandating a shift away from coal-generated electricity. 597 U.S. at 732. Similarly, in *UARG*, the Court held that our PSD and Title V authorities could not fully be extended to GHG emissions because those provisions “are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens.” 573 U.S. at 303. In these and other recent precedents, the Court has made clear that the express statutory authority required by major questions doctrine requires more than general language conferring “a merely plausible textual basis for the agency action.” *West Virginia*, 597 U.S. at 723.²⁰⁴

The EPA proposes that *West Virginia*, *UARG*, and other relevant major questions doctrine cases control the analysis of our authority under CAA section 111(b)(1)(A). As in *West Virginia*, our statutory authority does not clearly authorize the assertion of regulatory power announced in the 2015 Findings. And as in *UARG*, our statutory authority to “include a category of sources in such list if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare” does not clearly authorize using the CAA's stationary source listing to address GHG emissions based on global climate change concerns. The 2015 Findings concluded that the EPA had a “rational basis” for regulating CO₂ emissions from fossil fuel-fired power plants under CAA section 111, supported by the now-rescinded 2009 Endangerment Finding and certain other information. That the EPA asserted such authority based on

²⁰⁴ See, e.g., *Learning Resources, Inc.*, 607 U.S. at 242 (holding that the President lacked clear authority to implement tariffs under statutory provision authorizing him to “regulate . . . importation” in response to certain emergency situations); *Nebraska*, 600 U.S. at 506–07 (holding that the Department of Education lacked clear authority to forgive student loans under statutory language authorizing the Secretary to “waive or modify any statutory or regulatory provision applicable to the student financial assistance programs . . . deem[ed] necessary in connection with a war or other military operation or national emergency”); *NFIB v. OSHA*, 595 U.S. 109 (2022) (per curiam) (holding that the Occupational Safety and Health Administration lacked clear authority to impose a COVID–19 vaccine mandate or weekly testing for 84 million Americans through its authority to ensure “safe and healthful working conditions”); *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758 (2021) (per curiam) (holding that the CDC lacked clear authority to impose eviction moratorium during the COVID–19 pandemic under language permitting “such regulations as in [the Surgeon General's] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases”).

¹⁹⁷ Public Law 116–260, Div. S, 134 Stat. 1182, 2255–71 (codified at 42 U.S.C. 7675 *et seq.*).

¹⁹⁸ 26 U.S.C. 45Q.

¹⁹⁹ Public Law 117–169, section 60113, 136 Stat. 1818, 2074 (codified at 42 U.S.C. 7436).

²⁰⁰ Public Law 119–21.

²⁰¹ Public Law 119–2; see 90 FR 21225 (May 19, 2025).

²⁰² H.J. Res. 87; H.J. Res. 88; H.J. Res. 89; see also *Diamond Alt. Energy*, 606 U.S. at 107 n.1; Statement by the President (June 12, 2025): <https://www.whitehouse.gov/briefings-statements/2025/06/statement-by-the-president/>.

²⁰³ For example, California's Advanced Clean Cars II required an increasing amount of EVs to be sold so that by 2035 100 percent of new cars and light trucks sold in California would be zero-emission vehicles, including PHEV. See California Air Resources Board, California moves to accelerate to 100% new zero-emission vehicle sales by 2035, available at <https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035>.

only a “rational basis” is itself a strong indicator that the Agency was not relying on statutory language conferring clear congressional authorization. Moreover, the “substantially similar” approach taken in the 2015 Findings has similar legal flaws as the 2009 Endangerment Finding. The EPA proposes that in relying on the 2009 Endangerment Finding’s analysis and conclusions as the primary basis for regulating CO₂ under CAA section 111, the 2015 Findings erred by asserting authority to regulate GHG emissions from power plants in an attempt to resolve a global problem without clear congressional authorization.

The EPA further proposes that *Massachusetts* does not preclude the application of the major questions doctrine to our authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111(b)(1)(A), and that it does not provide a basis for concluding that Congress clearly authorized the Agency to assert such authority. The *Massachusetts* Court did not consider or have reason to interpret the scope of our authority under CAA section 202(a)(1) given our position in the 2003 Denial that GHGs are not “air pollutant[s]” under any provision of the statute, and it had no reason to examine the scope of our authority under CAA section 111(b). Rather, *Massachusetts* rejected our position at the time that GHGs are “categorically” excluded from the CAA and remanded for the Administrator to determine whether four GHGs met the standard in CAA section 202(a)(1). *UARG*, 573 U.S. at 320. Further, *Massachusetts* must be read together with the Supreme Court’s decisions in *West Virginia* and *UARG* as well as other relevant precedents decided since 2007.²⁰⁵ The decision in *Massachusetts* necessarily does not reflect consideration of these precedents or additional legislative and regulatory developments since that time.

The EPA further proposes that *AEP* does not limit our proposed application of the major questions doctrine to the 2015 Findings. The *AEP* Court held that, with respect to the displacement of Federal common law, CAA section 111 “speaks directly” to CO₂ emissions from power plants. 564 U.S. at 424. The Court concluded that Congress set out the standard for triggering regulation (e.g., to list categories of stationary sources that in the Administrator’s judgment

cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare) and empowered the EPA alone to determine whether the standard is met. The Court was not presented with the question whether GHG emissions from fossil fuel-fired power plants meet the standard. *Id.* at 426 (“The critical point is that Congress delegated to EPA the decision *whether and how* to regulate carbon-dioxide emissions from power plants; the delegation is what displaces federal common law. Indeed, were EPA to decline to regulate carbon-dioxide emissions altogether . . . federal courts would have no warrant to employ the federal common law of nuisance to upset the Agency’s expert determination.”) (emphasis added). The EPA did not decide “whether” such emissions could be regulated until the 2015 NSPS and 2015 CPP, which issued several years after *AEP*. Instead, the Court in *AEP* decided whether Federal district courts can determine, through unwritten Federal nuisance law, whether and how to regulate CO₂ emissions from power plants, and answered “no” given the existence of CAA section 111(d). *See id.*; *West Virginia*, 597 U.S. at 730.

The EPA requests comment on the proposed application of the major questions doctrine to the 2015 Findings and whether Congress clearly authorized the agency to regulate GHG emissions from fossil fuel-fired power plants in CAA section 111(b)(1)(A).

C. Eliminating GHG Emissions From Fossil Fuel-Fired Power Plants Would Be Futile

As another independent ground for the rescissions and repeals, the EPA is proposing that the Agency cannot or should not exercise its regulatory authority under CAA section 111 when that exercise would have no meaningful impact on the identified dangers to public health and welfare. Modeling analysis performed to evaluate the potential impacts of GHG regulations issued pursuant to CAA section 111 indicates that regulating fossil fuel-fired power plant CO₂ emissions under this provision would have no more than a trivial effect on the key global climate change indicators that relate to adverse public health and welfare impacts. These results and analyses are discussed in section V.C.3 of this preamble. The 2015 NSPS and the EPA’s subsequent attempts to establish GHG emission limitations for fossil fuel-fired EGUs avoided confronting this question by focusing on the emissions reductions potential of the regulation rather than the impacts of those emission

reductions on health and welfare. Upon further review, we propose that this approach is not consistent with the best reading of the statute or the requirement that regulations be reasonable and reasonably explained. CAA section 111(b)(1)(A) instructs the EPA to regulate in furtherance of public health and welfare when a source category contributes significantly to qualifying air pollution, not to reduce emissions regardless whether such reductions have any material health and welfare impact.

Specifically, the EPA is proposing that the potential for regulations limiting GHG emission from fossil fuel-fired power plants to yield more than *de minimis* gains for public health or welfare is relevant and should be considered when applying CAA section 111(b)(1)(A). This principle applies generally and was recognized in the 2009 Endangerment Finding when the EPA noted that the relative contribution of GHG emissions from new motor vehicles and engines in the U.S. and their contribution to global concentrations must be more than *de minimis* to invoke our authority under CAA section 202(a)(1). Although the 2009 Endangerment Finding failed to account for this principle in its findings, the EPA applied this principle in the Endangerment Finding Rescission to conclude, as one of several independent bases for that final action, that CAA section 202(a)(1)’s GHG motor vehicle regulations should be rescinded based on their inability to achieve more than a *de minimis* impact on public health and welfare. We propose to apply the same background legal principles to CAA section 111(b)(1)(A): *de minimis* concerns are not encompassed within the scope of general statutory language, and the ability of regulation to address identified dangers is relevant to whether the emissions contribute significantly to air pollution that endangers public health or welfare within the meaning of the statute in the first instance. As discussed in this subsection, our proposed analysis demonstrates that any potential impact on public health or welfare of CO₂ regulations for fossil fuel-fired power plant emissions is at most *de minimis*. Even a complete elimination of all CO₂ emissions from fossil fuel-fired power plants (far more than the standards at issue in this action would do if fully implemented) would not address the risks attributed to phenomena associated with elevated global concentrations of GHGs. We are proposing that this futility demonstrates that CAA section 111(b)(1)(A) does not, as a matter of text and structure,

²⁰⁵ The EPA notes that recent Supreme Court decisions have not cited *Massachusetts* as a precedent applying, or declining to apply, the major questions doctrine. *See, e.g., Learning Resources, Inc.*, 607 U.S. 229 (2026); *Nebraska*, 600 U.S. 477 (2023); *West Virginia*, 597 U.S. 697 (2022).

authorize or require the EPA to prescribe standards for GHG emissions from fossil fuel-fired power plants, and that retaining standards under the circumstances would be unreasonable.

1. Background Legal Principles

Courts have long recognized the “background” legal principle “against which all enactments are adopted” that general language does not encompass *de minimis* concerns. *Wis. Dep’t of Rev. v. William Wrigley Jr., Co.*, 505 U.S. 214, 231 (1992). Unless the relevant statute provides otherwise, agencies have implied authority to exempt *de minimis* concerns “when the burdens of regulation yield a gain of trivial or no value.” *Ala. Power Co. v. Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). This conclusion informs our interpretation of CAA section 111(b)(1)(A) by suggesting that the provision does not encompass the authority to regulate GHG emissions where regulations cannot have more than a trivial impact on the identified dangers to public health and welfare. Nothing in the statutory language of CAA section 111 suggests that Congress intended to overcome this background principle, and both the Supreme Court and the D.C. Circuit have recognized its applicability in comparable statutory contexts.²⁰⁶ Put another way, we propose that the inability of GHG emission limitations for fossil fuel-fired power plant to have any material impact on the global climate change concerns relied upon in the 2015 Findings suggests that it would be unreasonable to conclude that GHG emissions from fossil fuel-fired power plants cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare or to retain associated standards.

2. Proposed Approach for Assessing the Public Health and Welfare Impacts Related to Global Climate Change Concerns

The EPA is proposing to rely on global mean surface temperature (GMST)²⁰⁷ and global mean sea level

rise (GSLR)²⁰⁸ as metrics to assess the potential magnitude of public health and welfare impacts from the regulation of power plant GHG emissions under CAA section 111. These metrics, which are commonly derived from climate models, were the primary drivers of the EPA’s causal analysis within the 2009 Endangerment Finding, which the Agency relied on to establish the predicate for power plant CO₂ regulations under CAA section 111.

The 2009 Endangerment Finding centrally links GMST and GSLR to the adverse public health and welfare impacts attributed to global climate change concerns. There, the Administrator relied on IPCC Assessment Report 4 (AR4) projections to find that GMST would likely increase between 1.8 to 4 °C by 2100 (compared to the average temperature around 1990), with an uncertainty range of 1.1 to 6.4 °C. 74 FR 66519. Operating within this analytical framework, the Administrator found that elevated global concentrations of GHGs from all foreign and domestic sources were responsible for increased GMST that were responsible in turn for indirect health risks driven by (1) more frequent heat waves; (2) air quality effects, including increased formation of ozone; and (3) broader societal impacts related to increased frequency and severity of certain extreme weather events. 74 FR 66525.²⁰⁹ The Administrator also found that GHG emissions could lead to welfare effects related to GSLR and other downstream impacts, including (1) food production and agriculture; (2) forestry; (3) water resources; and (4) energy infrastructure and settlements, although the evidence was uncertain for several categories that may see near-term benefits. 74 FR 66531–35.²¹⁰

The nature of these specific health risks and welfare effects is speculative, multi-faceted, and multi-causal. The preceding discussion in section V.A.1.a explains the complex causal chain between the emission of “climate pollutants,” their global diffusion throughout the atmosphere, and the

subsequent manifestation of related public health and welfare impacts through additional complex causal chains. There, these analytical difficulties, uncertainties, and multiple causal leaps were themselves a reason to conclude that CAA section 111(b)(1)(A) does not encompass emissions that can be said to lead to adverse health and welfare impacts only by constructing a global air pollution framework. Here, they suggest that GMST and GSLR, which are key causal indicators for many of the adverse impacts attributed to global climate change that require fewer causal steps and analytical assumptions to assess, are reasonable proxies to examine the magnitude of public health and welfare impacts of GHG emission reductions in general, and CO₂ emission reductions from power plants in particular. The public health and welfare impacts represented by GMST and GSLR are the same public health and welfare effects that the Agency relied on in the 2015 NSPS to regulate power plant CO₂ emissions under CAA section 111 for the first time.

3. Proposed Futility Analysis and Rationale

The EPA recognizes that there are significant uncertainties related to climate modeling and significant, ongoing disputes regarding climate science and modeling. However, the EPA is proposing to utilize the climate modeling provided within this section to help illustrate that, even applying the assumptions of these climate models and uncertainties contained therein and without endorsing the underlying assumptions reflected in these commonly used models, removing all CO₂ emissions from fossil fuel-fired power plants would not materially address the public health and welfare dangers attributed to global climate change concerns.

To assess the magnitude of public health and welfare benefits available through the regulation of power plant GHG emissions under CAA section 111, the EPA developed a composite forecast of U.S. power plant CO₂ emissions from 2026 through 2100 based on projections of U.S. electric power generation and CO₂ emissions from the 2025 U.S. Energy Information Administration Annual Energy Outlook (AEO) and electricity supply and demand from the North American Electric Reliability Corporation (NERC). The composite forecast was developed specifically for this analysis to exclude the reduction in future emissions from the IRA. Additional details about the methodology the EPA used to develop

²⁰⁶ See *UARG*, 573 U.S. at 309 n.1; *Ala. Power*, 66 F.2d at 360–61; see also *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014) (approving of approach that did not require additional emissions reductions from States that contributed trivially to nonattainment in other States); *Ohio v. EPA*, 997 F.2d 1520, 1534–35 (D.C. Cir. 1993) (accepting *de minimis* approach to CERCLA five-year risk reviews because the statute did not clearly prohibit the approach and anything less would be contrary to legislative design).

²⁰⁷ As GMST is a widely used metric for tracking temperature changes related to global climate change concerns, we use the term interchangeably with “global temperature” within this preamble and supporting documentation.

²⁰⁸ As GSLR is a widely used metric for tracking sea level rise related to global climate change concerns, we use the term interchangeably with “global sea level,” “sea level,” and “sea level rise” within this preamble and supporting documentation.

²⁰⁹ The Administrator also noted that increased GMST could lead to changes in certain food- and water-borne pathogens and allergens (including increases in pollen resulting from increased plant growth at higher concentrations of CO₂) but did “not plac[e] primary weight on these factors.” 74 FR 66498, 66526.

²¹⁰ The Administrator relied on welfare impacts to water resources and sea level rise as providing “the clearest and strongest support for an endangerment finding.” 74 FR 66534.

this dataset and the specific AEO and NERC data relied on are available in the Technical Memo, *Temperature, CO₂ Concentration, and Sea Level Rise Impacts of CO₂ Emissions from U.S. Electricity Generating Units*, available in the rulemaking docket. Table 1 lists the resulting CO₂ emissions from U.S. power plants from this composite forecast in a 2026 baseline year as well as for two future years: 2050 and 2100 (Table 1).

The EPA used the Finite amplitude Impulse Response (v2.2.3) climate emulator model (FaIR model) to quantify changes in global CO₂ concentration and GMST associated with the marginal change in emissions from each power plant scenario relative to the baseline. The FaIR model is an open-source emulator that seeks to reasonably reflect the best available information and science but does not include all possible Earth system processes. In FaIR, GHG lifetimes are based on a four-box decay model that is also a function of atmospheric and ocean temperatures and emissions of other gases. The model accounts for radiative forcing from GHGs, aerosols, albedo changes due to land use, solar cycles, and volcanic eruptions, given an externally defined time path for each. FaIR uses three layers for the ocean component, as heat uptake by the ocean controls how fast atmospheric temperature changes after a change in radiative forcing. FaIRv2 includes uncertainty estimates that are based on a calibration to global climate models, historical observations, and parameter uncertainty ranges from the IPCC Sixth Assessment Report (AR6). Uncertainties in climate model parameters considered in FaIR include the sensitivity of climate to increases in atmospheric CO₂ concentrations, forcing from aerosol interactions with radiation and clouds, forcing from black carbon on snow, and carbon cycle parameters. All simulations were run with historical volcanic and solar cycle forcing, with solar values held constant after 2022.

The EPA also used the Building Blocks for Relevant Ice and Climate Knowledge (BRICKv1.0.1) model to quantify changes in GSLR associated with the marginal temperature changes from each emissions scenario. BRICK is a semi-empirical, open-source model, with four sub-components that each model the physical changes in the four major contributors to GSLR—glaciers and ice caps, land water storage, ice

sheets, and thermal expansion—in response to changes in temperature. Similar to FaIR, the BRICK model is also designed with uncertain parameters intended to encompass the range of possible GSLR responses to a given input of temperature and ocean heat content. Uncertainties in GSLR parameters considered in BRICK include contributions from glaciers and ice caps and the Antarctic and Greenland ice sheets, as well as ocean thermal expansion, and were calibrated through a coupled physical-statistical framework, using an adaptive Markov chain Monte Carlo approach. Reduced complexity models like BRICK and FaIR allow for the flexibility to analyze custom scenarios, quantitatively discern changes between any scenarios, and characterize uncertainties surrounding global change. The National Academies of Sciences, Engineering and Medicine (NASEM) in a 2017 report endorsed the use of the FaIR model, and the BRICK model was developed in response to recommendation 4–3 from the same 2017 NASEM report.²¹¹

All modeled outputs—absolute global CO₂ concentrations, GMST, and GSLR—were evaluated across three different future scenarios projected from 2026 to 2100. The first scenario is a baseline global emission scenario: the Shared Socioeconomic Pathway 2 scenario with a radiative forcing of 4.5 watts per square meter by 2100 (SSP2–4.5). The second two scenarios represent these same global emission projections, but with some amount of CO₂ emissions removed from U.S. power plants. The first eliminates all CO₂ emissions from U.S. power plants while the second eliminates 50 percent of U.S. power plant CO₂ emissions. The scenario that eliminates all CO₂ emissions from U.S. power plants is presented here for analytical completeness only. This scenario does not represent a realistic approximation of the impacts of any potential regulation addressing GHG emissions from fossil fuel-fired power plants under CAA section 111.

The EPA modeling described above estimates that global atmospheric concentrations of CO₂ will be 418.1 parts per million by volume (ppmv)

(with an associated 95 percent confidence interval (95 percent CI) of 416.7–419.7 ppmv) in the 2026 baseline year and projects that these concentrations will increase in the baseline scenario to a median of 475.4 ppmv by 2050 and 533.6 ppmv by 2100 (Table 2). The 95 percent CI reflects the uncertainty in the FaIR model input parameters and ranges from 461.8–484.3 ppmv in 2050 to 482.5–565.4 ppmv in the year 2100 (Table 2). When comparing to the year 2026, concentrations of CO₂ in this baseline scenario are projected to increase in 2050 and 2100 by 57.3 ppmv and 115.6 ppmv, respectively (Table 3). Emissions of CO₂ from power plants in the United States are projected to contribute 2.9 ppmv (or 5 percent) and 7.2 ppmv (or 6 percent) to this global increase by 2050 and 2100, respectively (Table 3).

The modeled GMST in the 2026 baseline year is estimated to be 1.33 °C above pre-industrial temperatures, defined as the average between 1850 and 1900 (Table 4). GMST in the baseline scenario is estimated to increase to 1.89 °C (95 percent CI: 1.44–2.37 °C) and 2.66 °C (95 percent CI: 1.86–3.87 °C) above pre-industrial temperatures by the years 2050 and 2100, respectively (Table 4). These changes are +0.55 °C (95 percent CI: 0.33–0.87 °C) and +1.30 °C (95 percent CI: 0.68–2.45 °C) above 2026 baseline temperatures (Table 5). Emissions of CO₂ from power plants in the United States are projected to contribute to 0.014 °C (95 percent CI: 0.010–0.018 °C) (or 2 percent) of this increase in GMST by 2050 and 0.035 °C (95 percent CI: 0.023–0.053 °C) (or 3 percent) of this increase by 2100 (Table 5).

The modeled GSLR in the 2026 baseline year is estimated to be 25.3 cm higher than during the pre-industrial era (1850–1900) (Table 6). GSLR in the baseline scenario is projected to be 38.9 cm (95 percent CI: 26.5–50.1 cm) by 2050 and 97.1 cm (95 percent CI: 59.6–166.3 cm) by 2100 relative to pre-industrial (Table 6). These increases in the baseline scenario are roughly 12.9 cm (95 percent CI: 9.8–23.2 cm) and 73.3 cm (95 percent CI: 36.0–141.7 cm) higher than 2026 levels (Table 7). Emissions of CO₂ from power plants in the United States contribute to roughly 0.10 cm (0.06–0.98 cm) (or 1 percent) of this global increase in 2,050 and 1.37 cm (0.39–4.77 cm) (or 2 percent) of this global increase by 2100 (Table 7).

²¹¹ National Academies of Sciences, Engineering, and Medicine. 2017. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*. Washington, DC: The National Academies Press. A copy of this report is available in the docket for the rulemaking. Available online: <https://doi.org/10.17226/24651>.

TABLE 1—GLOBAL CO₂ EMISSIONS (MILLION METRIC TONS (Mt) CO₂/YEAR (yr)) (ABSOLUTE AND CHANGE RELATIVE TO 2026) AND CONTRIBUTION FROM U.S. POWER PLANTS

Scenario	2026	2050	2100
#1 Baseline (SSP2–4.5) ^a	39,310	42,960 (+3,650)	14,480 (–24,830).
#2 U.S. EGU sector:			
#2a. 100% EGU Contribution	1,540	1,290	1,290.
#2b. 50% EGU Contribution	770	640	640.

^a Absolute emissions each year. In parenthesis, the absolute change (Mt) in global fossil CO₂ emissions in 2050 and 2100 relative to 2026.

TABLE 2—ABSOLUTE GLOBAL CO₂ CONCENTRATIONS (ppmv), BY SCENARIO *

Scenario	Modeled median (95% confidence interval) (ppmv)		
	2026	2050	2100
#1 Baseline (SSP2–4.5)	418.1 (416.7–419.7) ^{212 213}	475.4 (461.8–484.3)	533.6 (482.5–565.4).
#2 Baseline without U.S. EGU sector:			
#2a. Baseline w/o 100% EGU Contribution		472.5 (459.3–481.1)	526.3 (477.8–557.0).
#2b. Baseline w/o 50% EGU Contribution		473.9 (460.6–482.7)	529.9 (480.2–561.2).

* Contributions may not sum due to rounding.

TABLE 3—CHANGES IN GLOBAL CO₂ CONCENTRATIONS (ppmv) RELATIVE TO 2026, BY SCENARIO *

Scenario	Median concentration change (ppmv) and contribution from U.S. EGUs ^a	
	2050	2100
#1 Baseline (SSP2–4.5)	+57.3 (43.9–66.2) ppmv	+115.6 (64.3–147.4) ppmv.
#2 U.S. EGU sector:		
#2a. 100% EGU Contribution	2.9 (2.5–3.2) ppmv (5%) ^a	7.2 (4.7–8.6) ppmv (6%).
#2b. 50% EGU Contribution	1.5 (1.2–1.6) ppmv (3%)	3.6 (2.3–4.3) ppmv (3%).

^a Percent change calculated as the absolute contribution in each year (rows 2, 3) divided by the increase in the baseline in that year (row 1).

* Contributions may not sum due to rounding.

TABLE 4—GMST RELATIVE TO PRE-INDUSTRIAL (1850–1900), BY SCENARIO *

Scenario	Modeled median (95% confidence interval) (°C)		
	2026	2050	2100
#1 Baseline (SSP2–4.5)	1.33 (1.04–1.61) ²¹⁴	1.89 (1.44–2.37)	2.66 (1.86–3.87).
#2 Baseline without U.S. EGU Contribution:			
#2a. Baseline w/o 100% EGU Contribution		1.88 (1.43–2.36)	2.62 (1.83–3.82).
#2b. Baseline w/o 50% EGU Contribution		1.88 (1.44–2.37)	2.64 (1.85–3.85)

* Contributions may not sum due to rounding.

TABLE 5—CHANGE IN GMST RELATIVE TO 2026, BY SCENARIO *

Scenario	Median temperature change and contribution from U.S. EGUs	
	2050	2100
#1 Baseline (SSP2–4.5)	+0.55 (0.33–0.87) °C	+1.30 (0.68–2.45) °C.
#2 U.S. EGU Sector:		
#2a. 100% EGU Contribution	0.014 (0.010–0.018) °C (2%) ^a	0.035 (0.023–0.053) °C (3%).
#2b. 50% EGU Contribution	0.007 (0.005–0.009) °C (1%)	0.018 (0.012–0.026) °C (1%).

^a Percent change calculated as the absolute contribution in each year (rows 2, 3) divided by the increase in the baseline change in that year (row 1).

* Contributions may not sum due to rounding.

TABLE 6—GSLR (cm) RELATIVE TO PRE-INDUSTRIAL (1850–1900), BY SCENARIO *

Scenario	Modeled median (95% confidence interval) (cm)		
	2026	2050	2100
#1 Baseline (SSP2–4.5)	25.3 (14.5–32.9) ²¹⁵	38.9 (26.5–50.1)	97.1 (59.6–166.3).
#2 Baseline without U.S. EGU Contribution:			
#2a. Baseline w/o 100% EGU Contribution		38.8 (26.4–49.9)	95.5 (59.0–163.9).

TABLE 6—GSLR (cm) RELATIVE TO PRE-INDUSTRIAL (1850–1900), BY SCENARIO *—Continued

Scenario	Modeled median (95% confidence interval) (cm)		
	2026	2050	2100
#2b. Baseline w/o 50% EGU Contribution		38.8 (26.4–50.0)	96.1 (59.3–164.4).

* Contributions may not sum due to rounding.

TABLE 7—CHANGE IN GSLR (cm) RELATIVE TO 2026, BY SCENARIO *

Scenario	Median sea level change and contribution from U.S. EGUs	
	2050	2100
#1 Baseline (SSP2–4.5)	+12.9 (9.8–23.2) cm	+73.3 (36.0–141.7) cm.
#2 U.S. EGU Sector:		
#2a. 100% EGU Contribution	0.10 (0.06–0.98) cm (1%) ^a	1.37 (0.39–4.77) cm (2%).
#2b. 50% EGU Contribution	0.05 (0.03–0.54) cm (<1%)	0.44 (0.20–2.53) cm (1%).

^a Percent change calculated as the absolute contribution in each year (rows 2, 3) divided by the increase in the baseline in that year (row 1).

* Contributions may not sum due to rounding.

As shown above, the changes in CO₂ emissions and global CO₂ concentrations by 2050 and 2100 resulting from the complete elimination of all CO₂ emissions from U.S. power plants would be relatively minor. And CAA section 111(b)(1)(a) instructs that the appropriate indicator of impact is not emissions or concentrations, but public health and welfare impacts.²¹⁶ Section V.C.2 describes our proposed basis for using the projected impacts of the elimination of power plant CO₂ emissions on trends in GMST and GSLR as a proxy for public health and welfare impacts.

While the EPA presents the results of a scenario eliminating all CO₂ emissions from U.S. power plants, this substantially overestimates the impacts of the EPA's GHG regulations and is not intended to be a realistic approximation of those impacts. As noted above, the 100 percent elimination scenario is presented here for analytical

completeness. The 2015 NSPS was projected to result in only “negligible CO₂ emission changes.” 80 FR 64640. While the EPA estimated non-zero impacts for subsequent power plant regulations under CAA section 111, all fell well below a 100 percent reduction in emissions from U.S. power plants. The 2015 CPP, which assessed its emission impacts under two different implementation scenarios, projected an average reduction of 414 million short tons of CO₂ in 2030. 80 FR 64924. The 2019 ACE Rule estimated a smaller 11 million short ton decline in power plant CO₂ emissions in 2030. For 2035, the 2019 ACE Rule's estimated emissions reduction shrank to 9.3 million short tons. 84 FR 32561. The 2024 CPS projected annual reductions in power plant CO₂ emissions of 50, 123, 54, and 42 million metric tons in 2030, 2035, 2040, and 2045, respectively. 91 FR 40005. By comparison, the composite emissions forecast in this proposed futility analysis estimated total annual CO₂ emissions from U.S. power plants of 1,540 million metric tons (Mt) in 2026 and 1,290 Mt in all years after 2050 (Table 1). Converting units for a direct comparison to the EPA's 2019 ACE and 2015 CPP rules, these values represent 1,698 and 1,422 million short tons, respectively, in 2026 and after 2050. None of the annual estimated CO₂ emission impacts for the 2015 NSPS, 2015 CPP, 2019 ACE, or 2024 CPS approaches these totals. Estimating the percentage reduction in CO₂ emissions from U.S. power plants that would or could result from regulation of these sources under any CAA section 111 is highly uncertain and turns on factors that are difficult to predict, including our regulatory decisions for the power sector, separate regulatory influences,

and changes to the underlying economics and power system technologies. Regardless, the EPA believes that the complete elimination of CO₂ emissions from U.S. power plants is unrealistic. As a proxy for a more likely, real-world scenario, we present below a scenario in which 50 percent of CO₂ emissions from U.S. power plants would be eliminated.

Under the 50 percent scenario, Table 5 shows that retaining 50 percent of the CO₂ emissions from power plants would contribute to a smaller amount of warming than the 100 percent scenario, potentially resulting in an estimated 0.007 (0.005–0.009) °C increase in GMST by 2050 and a 0.018 (0.012–0.026) °C increase in GMST by 2100 (temperature increases are relative to the 2026 baseline). Similarly, 50 percent of power plant CO₂ emissions would contribute to a smaller amount of GSLR than 100 percent of the power plant CO₂ emissions, potentially resulting in an estimated 0.05 (0.03–0.54) cm increase (again, increases are relative to the 2026 baseline) in GSLR by 2050 and 0.44 (0.20–2.53) cm increase in GSLR by 2100 (Table 7). This is an illustrative scenario that cannot be assumed to translate with precision directly to specific adverse health or welfare impacts. But these figures are likely an overestimation of the actual predicted impact of CAA section 111 GHG standards over the relevant time horizon because the 50 percent scenario does not reflect what such standards would realistically achieve given technical and statutory constraints. The EPA's prior regulatory impact analyses for power sector regulations support this conclusion. The composite forecast estimated that 50 percent of U.S. power plant CO₂ emissions correspond to 770

²¹² Average annual observed CO₂ concentrations in 2024 were 423 ppmv. Source: Trends in Atmospheric Carbon Dioxide (CO₂) from: <https://gml.noaa.gov/ccgg/trends/global.html>.

²¹³ Observed data do not exactly correspond with the modeled estimates, as the FaIR and BRICK modeling start in 1750 (or 1850) for estimation of both historical and future projected GHG concentrations, temperatures, and GSLR.

²¹⁴ GMST observations in 2024 were 1.55 (1.42–1.68) °C relative to 1850–1900 to present from <https://wmo.int/publication-series/state-of-global-climate-2024>. The uncertainty in observed temperatures is due to the uncertainty in temperature before 1900, due to the sparsity of observations during that period.

²¹⁵ Observations of GSLR in 2024 are 22.5 cm relative to pre-industrial. Source: <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level>.

²¹⁶ See section V.A.2.b of this preamble for discussion of the EPA's proposed interpretation that CAA section 111(b)(1)(A) requires the Agency to evaluate a source category's contribution to endangerment, not merely to air pollution.

Mt in 2026 and 640 Mt in each year after 2050, which are equivalent to 849 and 705 million short tons, respectively (Table 1). As with the comparison between total U.S. CO₂ power plant emissions and the estimated CO₂ emissions of prior EPA rules, none of the annual estimated CO₂ emission impacts for the 2015 NSPS, 2015 CPP, 2019 ACE, or 2024 CPS exceeds the composite forecast emissions of the 50 percent reduction scenario.

Whether viewed in terms of the complete elimination scenario or the 50 percent reduction scenario, these projections lead the EPA to propose that power plant GHG regulations predicated on CAA section 111(b)(1)(A) have no material impact (*i.e.*, beyond a *de minimis* level) on key indicators of public health and welfare effects stemming from global climate change concerns. This, in turn, leads us to propose that the futility of GHG emission standards under CAA section 111 further supports that global climate change concerns are not encompassed within the scope of what Congress authorized and required the EPA to address. Under any reasonable understanding, the predicted impacts of even the unrealistic scenario of eliminating all U.S. CO₂ emissions from power plants on GMST and GSLR are *de minimis*. The predicted impacts by 2100 (0.035 °C as shown in Table 5) are below the range of measurability for GMST.²¹⁷ Additionally, GMST variability from 2016–2025 was 0.14 °C, which is almost four times greater than the GMST change estimated in 2100 from eliminating all U.S. power plant GHG emissions.²¹⁸

The 50 percent reduction scenario, which reflects a more reasonable

approximation of the power plant GHG emission reduction potentials achievable through the application of CAA section 111, clearly demonstrates *de minimis* impacts. The impact of reducing U.S. power plant CO₂ emissions by 50 percent is that the sector would contribute approximately one percent of the model-projected increase in GMST between the baseline year (2026) and 2050 and 2100 (Table 5).²¹⁹ For GSLR, the impact of 50 percent of U.S. power plant CO₂ emissions is less than one percent of the modeled increase between 2026 and 2050 and only one percent of the change between 2026 and 2100. As discussed in section V.C.1 of this preamble, Congress does not include *de minimis* concerns in general statutory language, and agencies need not address *de minimis* concerns where doing so would not yield value under the statutory scheme.²²⁰ The general instruction in CAA section 111(b)(1)(A) to “list categories of stationary sources” where each category must “cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare” does not override this background principle, and regulatory agencies and courts have viewed impacts of one percent as *de minimis* and therefore not encompassed within general statutory language.²²¹

Relevance to the best reading of CAA section 111(b)(1)(A). In proposing this futility finding, we recognize that CAA section 111(b)(1)(A) authorizes preventative regulation that need not fully ameliorate the identified harms. But in discussing the statute’s preventative nature, the EPA and reviewing courts have consistently understood that regulation must be capable of having *at least a material*

impact on the identified danger.²²² The background legal principles discussed at the start of this section support this reading of the statutory standard.

The proposed futility determination in this supplemental notice is different in kind from the policy arguments previously addressed in *Massachusetts and Coalition*, which focused on the cost-benefit balance of potential regulatory responses and general concerns about the most efficient way to regulate in response to global climate change concerns. Rather, we are proposing that CAA section 111(b)(1)(A) requires that emission standards be capable of having a material impact on the identified danger for the Administrator to conclude that regulated air pollutant from a listed source category, here, GHG emissions from fossil fuel-fired power plants, “contributes significantly” to air pollution that may “reasonably be anticipated” to endanger public health and welfare.

The proposed futility determination also differs in degree from other statutory contexts where the EPA has assessed our authority under the CAA to address global climate change concerns, namely our authority under CAA section 202(a)(1). There, the Administrator may only prescribe standards when the motor vehicle air pollutant emissions “cause or contribute” to air pollution that meets the statutory endangerment requirement. CAA section 111(b)(1)(A) sets a higher threshold, requiring that the regulated category of sources “causes, or contributes significantly” to air pollution that meets the endangerment threshold. This textual difference indicates that Congress intended an even stronger linkage between the authority to regulate stationary sources under CAA section 111 and the degree of harm reduction achievable through the exercise of that authority. If standards controlling emissions from the regulated source category would not materially impact the identified danger, it cannot be said that the emissions contribute significantly to air pollution that meets the endangerment threshold. Put another way, the inability of GHG emission standards to have any material impact demonstrates that GHG emissions from fossil fuel-fired power plants do not contribute significantly to air pollution that endangers public

²¹⁷ The EPA uses the term “measurability” here to refer to the uncertainty in reconstructing estimates of historical global mean surface temperature. The magnitude of the modeled change in GMST in 2100 associated with eliminating all U.S. CO₂ emissions from power plants (Table 5) is less than the level of uncertainty in GMST estimates for the year 2020, as calculated by several global products (*e.g.*, Figure 4 in Lenssen, N. (2024) A NASA GISTEMPv4 Observational Uncertainty Ensemble, *Journal of Geophysical Research: Atmospheres*, 129, e2023JD040179. <https://doi.org/10.1029/2023JD040179>).

²¹⁸ National Centers for Environmental Information, *Climate at a Glance*. NOAA GlobalTemp. Available at https://ncei.noaa.gov/access/monitoring/climate-at-a-glance/global/time-series/globe/land_ocean/tavg/ytd/12/1950-2025. The EPA assumes for the purposes of this comparison that the “variability” in GMST is represented by the standard deviation of the global annual land and ocean average temperature anomaly data from 2016–2025 (exclusive of 2016). The magnitude of the modeled change in GMST associated with eliminating all U.S. CO₂ emissions from power plants (Table 5) is less than the recent year-to-year annual variability in mean GMST.

²¹⁹ For context, the Administrator relied in the Endangerment Finding on predictions that global temperature would increase from 1990 to 2100 between 1.8 to 4.0 °C. 74 FR 66519.

²²⁰ See, *e.g.*, *UARG*, 573 U.S. at 333; *Ala. Power*, 636 F.2d at 360–61.

²²¹ See, *e.g.*, *UARG*, 573 U.S. at 333 (suggesting that an appropriate *de minimis* level of stationary source GHG emissions could be substantial in an absolute sense); *EME Homer*, 572 U.S. 489 (approving rule that did not require additional emissions reductions from States that contributed less than one percent to nonattainment in other States); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d 619, 625 (D.C. Cir. 2019) (applying benchmark of five-to-six percent for the number of uninjured class members that destroy predominance in class certification context); *CareFirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263, 268 (4th Cir. 2006) (survey showing two percent consumer confusion *de minimis* in the trademark context); *Arent v. Shalala*, 70 F.3d 610, 617 (D.C. Cir. 1995) (accepting 10 percent *de minimis* threshold in FDA compliance regulation).

²²² See, *e.g.*, *Ethyl Corp.*, 541 F.2d at 29–32 (approving standards for lead content in gasoline supported by finding that lead emissions from gasoline were a “significant source” of total environmental exposure “that was particularly suited to ready reduction”).

health or welfare. That determination is relevant to how we assess the outer bounds of CAA section 111(b)(1)(A).

The EPA has already recognized that *de minimis* principles apply when considering the agency's CAA authority to address harms attributed to global climate change concerns. The EPA acknowledged in the 2009 Endangerment Finding that CAA section 202(a) incorporates *de minimis* principles, stating that the contribution of new motor vehicle and engine GHG emissions to "air pollution" must be more than trivial. See 74 FR 66506, 66509, 66542–43. But the 2009 Endangerment Finding avoided consideration of this limitation by severing its endangerment and contribution analyses. We asserted then that requiring the Agency to show that control measures "would prevent at least a substantial part of the danger" would "be an unworkable interpretation, calling for EPA to project out the result of perhaps not one, but even several, future rulemakings stretching over perhaps a decade or decades." 74 FR 66507–08. We further asserted that effectiveness would turn not only on CAA section 202(a)(1) regulations, but also on "the larger context of the CAA and perhaps even the global context" based on our belief that all sources must "do their part" to avoid a collective action problem. 74 FR 66508. In this way, we deferred to future agency action any consideration whether regulation would have more than a *de minimis* impact. Until recently, the EPA never meaningfully returned to this question. For example, in multiple rounds of CAA section 202(a)(1) GHG emission standard rulemakings predicated on the 2009 Endangerment Finding, we focused on estimates of GHG emission reductions and, in regulatory impact analyses not relied upon to justify the standards, attempts to monetize such reductions using social cost of carbon (SCC) methodology.²²³ That was not consistent with the best reading of the statute, which provides that the proper focus is not on the emissions themselves, but on the possible dangers to public health or welfare. When the Agency returned to the futility question in the Endangerment Finding Rescission, the EPA found that even the total elimination of light-duty, medium-duty, and heavy-duty vehicle GHG emissions, and certainly any emission reductions likely to be achieved through regulation, would have a *de minimis*

impact on public health and welfare harms.²²⁴

The EPA has similarly failed over multiple rulemakings to consider whether regulations predicated by CAA section 111(b)(1)(A) addressing GHG emissions from fossil fuel-fired power plants have more than a *de minimis* impact on the harms attributed to global climate change concerns. The 2015 NSPS, which asserted authority to regulate CO₂ emissions from fossil fuel-fired power plants in the first instance, projected only "negligible CO₂ emission changes" because the agency anticipated that "newly constructed EGUs will likely choose technologies, primarily [natural gas combined cycle], which meet the standards even in the absence of this rule." 80 FR 64640. The 2015 CPP, which attempted to regulate CO₂ emissions from existing fossil fuel-fired power plants and was promulgated simultaneously with the 2015 NSPS, included an impacts analysis focused on the rule's CO₂ emission reduction potential and, similar to the EPA's prior approaches in the mobile source context, applied a SCC-based methodology to monetize those reductions.²²⁵ The EPA's next attempt, the 2019 ACE rule, estimated the CO₂ emission changes from an illustrative rule implementation scenario,²²⁶ while the Agency's most recent effort to apply a framework to regulate CO₂ emissions from fossil fuel-fired power plants, the 2024 CPS, generally followed the 2015 CPP's analytical approach with an impacts analysis centered on anticipated CO₂ emission changes and then monetized by applying SCC values. See 91 FR 40004–06. In none of these attempts did the EPA squarely consider the degree of the regulatory impacts upon the adverse public health and welfare effects attributed to global climate change concerns that served as the basis for the EPA's regulatory authority.

Emissions standards for air pollution that impacts public health and welfare through local or regional exposure, the traditional target of CAA section 111, have markedly different impacts from regulations based on global climate change concerns. Regulations targeting air pollution that adversely impacts health or welfare through local or regional exposure provide direct local and regional health benefits commensurate with the amount of pollution reduced. For global climate change, however, harm reductions do not occur directly as result of emission

reductions. There, the linkage between the emission of the air pollutant and the harms to public health and welfare depends on the intermediate diffusion of GHGs into the global atmosphere and then on additional causal chains that eventually lead to the asserted impacts. Moreover, standards addressing air pollution exhibiting adverse local or regional exposure-based impacts achieve public health and welfare benefits without relying on further action by additional sources or other countries. The impacts from GHGs based on global climate change concerns, in contrast, stem from a collective mass of emissions that is both globally diffused and predominantly emitted by sources outside of the United States, in addition to the time-horizon considerations discussed earlier in this preamble. Thus, non *de minimis* harm reductions necessarily depend on coordinated action across many, many sources. But for air pollution with local or regional exposure-based health impacts, such as criteria pollutant emissions from fossil fuel-fired power plants, regulations can have a material impact on public health and welfare regardless whether the EPA regulates the same emissions from other source categories. Importantly, the risk-reduction benefits of those standards are also *material* regardless whether other countries reduce emissions of the same pollutants.²²⁷

VI. Repeal of GHG Standards of Performance for Fossil Fuel-Fired EGUs Under CAA Section 111

For the reasons stated in section V of this preamble, the EPA is proposing to repeal all GHG standards for fossil fuel-fired EGUs. This section details the scope of the proposed repeals and our understanding of the impact of the repeals.

A. Scope of Repeal of GHG Standards of Performance

The proposed repeal would be limited to the regulatory provisions setting out GHG standards of performance for fossil fuel-fired EGUs found in 40 CFR part 60, subparts TTTT and TTTTa, which are the GHG standards of performance in place for this source category under CAA section 111 after issuance of the concurrent final rule. If finalized as proposed, the conclusion that the EPA lacks statutory authority to regulate power plant emissions in response to

²²³ See, e.g., 89 FR 29440, 29675 (Apr. 22, 2024) (2024 HD GHG Emission Standards Rule); 75 FR 25324 (May 7, 2010) (Tailpipe Rule).

²²⁴ 91 FR 7728.

²²⁵ See 80 FR 64920–30.

²²⁶ See 84 FR 32561.

²²⁷ To note, the EPA acknowledges that criteria air pollution may originate, in part, from other countries and that the CAA allows for discounting those emissions when determining compliance with the NAAQS and authorizes the EPA to take certain steps under certain conditions.

global climate change concerns would also require rescinding the findings and determinations in the 2015 NSPS and 2024 CPS, along with the remaining standards in the 2024 CPS. The decision to create a source category for fossil fuel-fired EGUs for the purpose of regulating GHG emissions would no longer be operative, and any endangerment and significant contribution findings applicable to fossil fuel-fired EGUs, whether based on the 2009 Endangerment Finding or additional information, would similarly be rescinded.

The 2015 NSPS includes standards of performance for GHG emissions from steam generating units and integrated gasification combined cycle (IGCC) facilities that commence construction after January 8, 2014, commence reconstruction after June 18, 2014, or commence modification after January 8, 2014, but on or before May 23, 2023. 80 FR 64510. It also includes standards of performance for GHG emissions from stationary combustion turbines that commence construction after January 8, 2014, but on or before May 23, 2023, or commence reconstruction after June 18, 2014, but on or before May 23, 2023. These regulations are contained within 40 CFR part 60, subpart TTTT, and are currently in effect.

The 2015 CPP established emission guidelines and required the submission of State plans to implement and enforce regulatory requirements, including those based on a BSER of generation shifting. 80 FR 64662. Such plans would have established standards of performance for GHG emissions from steam generating units, IGCC units, and stationary combustion turbines that commenced construction on or before January 8, 2014 (*i.e.*, existing fossil fuel-fired power plants). The 2015 CPP was codified at 40 CFR part 60, subpart UUUU. The 2015 CPP was never implemented because the Supreme Court stayed the action in 2016. The EPA later repealed the 2015 CPP (*i.e.*, the entirety of 40 CFR part 60, subpart UUUU) in the 2019 ACE Rule, and the Supreme Court subsequently held in *West Virginia* that the 2015 CPP exceeded the Agency's authority. As a result, none of the 2015 CPP's regulatory provisions are in effect and all have been removed from the CFR.²²⁸

The 2019 ACE Rule, finalized in 2019, established emission guidelines and required the submission of State plans

to implement and enforce regulatory requirements based on a different BSER from that in the 2015 CPP. 84 FR 32520. Under this rule, codified at 40 CFR part 60, subpart UUUUa, States were required to establish standards of performance for coal-fired steam generating units that commenced construction on or before January 8, 2014. The EPA repealed this aspect of the 2019 ACE Rule when it promulgated the 2024 CPS. 89 FR 39798.

The 2024 CPS—the EPA's most recent regulatory action in this context—revised standards of performance for new and reconstructed fossil fuel-fired stationary combustion turbines that commence construction after May 23, 2023, and also revised the standards of performance applicable to coal-fired steam generating units and IGCC facilities that commence modification after May 23, 2023. These revised standards of performance are codified at 40 CFR part 60, subpart TTTTa. The 2024 CPS also included emission guidelines and required the submission of State plans to implement and enforce regulatory requirements based on BSERs of 90 percent CCS, 40 percent natural gas co-firing, or certain practices, as applicable. The emission guidelines applied to fossil fuel-fired steam generating units that were in operation or had commenced construction on or before January 8, 2014, and coal-fired steam generating units that commenced a modification on or before May 23, 2023. The regulations addressing State plans for existing sources were codified at 40 CFR part 60, subpart UUUUb.

In the final rule issued concurrently with this proposal, the EPA is repealing certain portions of the 2024 CPS pursuant to a record-based reconsideration of its BSER determinations. Specifically, the Agency is repealing emission guidelines for existing fossil fuel-fired steam generating units (the entirety of 40 CFR part 60, subpart UUUUb), the standards of performance for coal-fired steam generating units undertaking a large modification (contained within 40 CFR part 60, subpart TTTTa), and the standards of performance for base load combustion turbines that apply beginning January 2032 (contained within 40 CFR part 60, subpart TTTTa).²²⁹ As noted previously, the Agency is not reopening or seeking further comment on this action, which finalizes the alternative proposal in the June 2025 NPRM and includes responses to all significant comments

received on the alternative proposal. Rather, we summarize the final rule here to explain the scope of the repeal that would result from finalizing the proposed approach in this supplemental proposal. We note that the scope of such repeal would be identical to that which would result from finalizing the primary proposal in the June 2025 NPRM.

In summary, the existing requirements related to GHG emissions from fossil fuel-fired power plants under CAA section 111—accounting for the final rule issued concurrently with this supplemental proposal—are: (1) standards of performance for new, reconstructed, and modified steam generating units and IGCC facilities under 40 CFR part 60, subpart TTTT; (2) standards of performance for new and reconstructed stationary combustion turbines under 40 CFR part 60, subpart TTTT; and (3) standards of performance for new and reconstructed stationary combustion turbines under 40 CFR part 60, subpart TTTTa. The EPA is proposing to repeal the remaining regulations in 40 CFR part 60 subparts TTTT and TTTTa on the basis that we lack the authority for these regulations under CAA section 111.

B. Impacts of Repeal of GHG Standards of Performance

The proposed repeal would increase flexibility for regulated entities currently subject to existing requirements in the 2015 NSPS and/or 2024 CPS. Sources constructed, modified, or reconstructed after May 23, 2023, would no longer be subject to the requirements of the 2024 CPS, and sources constructed, modified, or reconstructed between January 8 or June 18, 2014, as applicable, and May 23, 2023, would no longer be subject to the requirements of the 2015 NSPS.

These proposed repeals would increase flexibility for power plants constructed, modified, or reconstructed between 2014 and 2023, and for regulated parties seeking to construct, modify, or reconstruct power plants since 2023 and going forward. Regulated parties would no longer be constrained by standards of performance for GHG emissions pursuant to CAA section 111. At the same time, regulated parties would not be required, as a consequence of the proposed repeals, to alter existing plans, designs, technologies, or investments. Thus, we would not anticipate material compliance difficulties on the part of regulated parties in response to the proposed rescissions and repeals.

If finalized as proposed, the repeals would not disrupt prior NSPS or emission guidelines for the emission of

²²⁸ As noted previously, were the 2015 CPP not already repealed, finalizing the conclusion that the EPA lacks statutory authority to regulate power plant GHG emissions in response to global climate change would require treating the 2015 CPP in the same manner as the 2015 NSPS and 2024 CPS.

²²⁹ All other standards of performance for combustion turbines in 40 CFR part 60, subpart TTTTa remain in effect.

air pollutants by power plants. For example, standards for PM, NO_x, and SO₂ are outside the scope of this rulemaking and would not be impacted by the contemplated rescissions and repeals. As discussed in section III of this preamble, the EPA has been regulating such emissions with adverse impacts from local and regional exposure since the 1970s under several source categories encompassing power plants. Similarly, the proposed repeals and supporting rationales would not encompass federally enforceable requirements for the emission of air pollutants applicable to particular fossil fuel-fired EGUs. For example, limitations on criteria pollutant emissions arising from an EPA-approved SIP or EPA-issued FIP under the NAAQS program would not be impacted by the contemplated rescissions and repeals. The EPA has not attempted to regulate GHGs, individually or collectively, as criteria pollutants under the NAAQS program.

If finalized as proposed, the repeals would not impact existing regulations for source categories other than fossil fuel-fired EGUs under CAA section 111. That includes limited instances in which existing regulations address the emission of GHGs for reasons other than global climate change concerns. For example, the EPA has regulated certain solid waste landfills since 1996, including through limited regulatory provisions for methane that address, among other things, the risk of explosions in the landfill context. That also includes limited instances in which existing regulations address the emission of GHGs in response to global climate change concerns, but for distinct source categories. For example, the EPA has regulated the oil and gas source category since 2016 in a manner that in part addresses global climate change concerns by limiting methane emissions and in part addresses adverse impacts from local and regional exposure by limiting VOC emissions. Regulations for the oil and gas source category under CAA section 111 have their own regulatory history and relevant considerations. The EPA would address in a future rulemaking, as appropriate, the extent to which the proposed conclusions in this supplemental proposal and the June 2025 NPRM with respect to the Agency's statutory authority under CAA section 111 require revisions to the oil and gas regulations at 40 CFR part 60, subparts OOOOa, OOOOb and OOOOc.

If finalized as proposed, the proposed repeals also would not impact the CAA's preemptive effect with respect to the regulation of interstate emissions.

The CAA would continue to displace any Federal common-law claims that might otherwise be available to those seeking to regulate GHG emissions from power plants. In CAA section 111, Congress adopted a standard for when such emissions rise to the level of regulatory concern and “delegated to EPA the decision whether and how to regulate” such emissions. *AEP*, 564 U.S. at 426. Similarly, the proposed repeals would not impact preemption under the CAA and other applicable constraints on State regulation of State common-law claims, statutes, or regulations that seek to regulate out-of-state GHG emissions. See *City of New York v. Chevron Corp.*, 993 F.3d 81, 98–100 (2d Cir. 2021); cf. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987).

Under the approach proposed in this rulemaking, the EPA would affirm its authority under CAA section 111 to list and regulate source categories that, in the Administrator's judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Adopting the approach proposed in this rulemaking would not disturb our authority to identify and regulate circumstances where emissions, including GHG emissions, satisfy the statutory threshold for listing and regulation. Although we grouped and labeled CO₂, methane, and additional gases as “GHGs” and “climate forcers” in the 2009 Endangerment Finding and 2015 NSPS and 2015 CPP, each is a gas emitted into the air with individual properties that may, under certain circumstances and like any other gas, endanger public health or welfare through local or regional exposure. Thus, for example, we would continue to regulate methane emissions from the municipal solid waste landfills source category in response to the risk of on- and off-site explosions in the landfill context. However, we would not list or regulate a source category based on global climate change concerns associated with its GHG emissions because such concerns would not satisfy the statutory standard for regulation.

The proposed repeals would effectively return stationary source regulation to the pre-2015 status quo the Supreme Court faced in *AEP*. The Court in *AEP* did not predicate its analysis on the EPA's exercise of regulatory authority or issuance of any findings predicate thereto with respect to particular emissions. Rather, the Court explained that CAA section 111 “directs the EPA” to list and establish standards of performance for source categories that meet the statutory threshold, that the Act “provides multiple avenues for

enforcement,” and that “[i]f EPA does not set emissions limits for a particular pollutant or source of pollution, States and private parties may petition for a rulemaking on the matter, and EPA's response will be reviewable in federal court.” 564 U.S. at 425. Thus, the Act itself “provides a means to seek limits on emissions of carbon dioxide from domestic powerplants.” *Id.* The Court further explained that the CAA “is no less an exercise of the Legislature's ‘considered judgment’ concerning the regulation of air pollution because it permits emissions *until* EPA acts The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants; the delegation is what displaces federal common law.” *Id.* at 425 (quoting *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 22 n.32 (1981)). Preemption is no less applicable where, as contemplated here, the EPA does not regulate emissions that do not meet the statutory standard for imposing regulations. Congress exercised its “‘considered judgment’” in setting out a standard that allows emissions until the Agency determines “whether” the standard is met and, if so, “how” they should be regulated.

With respect to State regulation, the CAA authorizes States to regulate emissions from sources within their borders.²³⁰ However, the Act does not empower States to apply their own law to control out-of-state emissions by regulating sources outside their jurisdiction. The Act delegates the development of generally applicable standards to the EPA (e.g., NSPS under CAA section 111(b) and NESHAPs under CAA section 112) and instructs States to develop and submit to the EPA for review plans for implementing and enforcing certain Federal requirements within their borders (e.g., emission guidelines under CAA section 111(d) and NAAQS under CAA sections 107–110). And the Act provides specific authorities under which the EPA may require States to limit emissions from sources within their jurisdiction to address impacts of those emissions in other States (e.g., interstate transport under CAA section 110(a)(2)(D)). In short, the Act “permits states to create and force their own emission standards applicable to in-state polluters” but does not authorize regulatory efforts against out-of-state sources. *City of New York*, 993 F.3d at 99–100. Because

²³⁰ See 42 U.S.C. 7416 (confirming that States and local subdivisions may adopt and enforce limits on stationary sources that are not less stringent than an applicable Federal standard or limitation).

“disputes involving interstate air pollution” implicate Federal interests “that are incompatible with the application of state law,” States cannot regulate, whether through legislation or common-law claims, emissions from out-of-state sources absent statutory authorization that the Act does not provide. *Id.* at 91–92 (discussing *Illinois v. City of Milwaukee*, 406 U.S. 91, 102–03 (1972)).

Note that the EPA is not expanding the scope of this rulemaking to include additional regulatory subjects by discussing the anticipated impacts of the proposed repeals and rationales on other CAA programs, additional source categories, and issues related to preemption. We are not proposing to repeal, revise, or prescribe regulations pertaining to these subjects and are not seeking comment on these subjects except as relevant to the proposed actions and rationales in this rulemaking. Rather, we discuss these subjects to clarify the scope of the proposed actions and rationales, inform public comments on the proposed actions and rationales, and solicit comment on the extent to which the additional rationales implicate reliance interests not already presented for public comment in the primary proposal to the June 2025 NPRM.

VII. Requests for Comment

The EPA is specifically soliciting comment on key aspects of the proposed rule. To facilitate comment on those portions of the rule, the EPA has indexed each comment solicitation with a unique identifier below (e.g., “C–1”, “C–2”) to provide a consistent framework for effective and efficient provision of comments. Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that

commenters include the identifier either in a heading or within the text of each comment, to make clear which comment solicitation is being addressed. The EPA notes that the Agency is not limiting comment to these identified areas. Specifically, we are soliciting comment on the following:

- Any relevant arguments and information, including with respect to legitimate reliance interests on the 2015 NSPS and the 2024 CPS (C–1).
- The textual requirements of CAA section 111(b), relevant context from the remainder of CAA section 111, and relevant structural arguments regarding the CAA more generally, including statutory provisions not specifically discussed in this proposal (C–2).
- The alternative interpretation that removing GHG emissions from EGUs would be futile (C–3).
- Whether and how the Supreme Court’s decision in *Loper Bright* should inform the EPA’s approach to interpreting CAA section 111 and selecting which interpretation better reflects the best reading of the statute (C–4).
- Climate impact modeling with respect to the impact from GHGs from EGU, if any (C–5).
- Additional information on cost savings, benefits, and disbenefits, including those that have not been monetized, quantified, or qualitatively discussed. To the extent feasible, provide uncertainty analyses with any monetized or quantified information (C–6).
- Other electric utility modeling or information related to the impacts of this proposed regulatory action that may be more appropriate than the use of the Integrated Planning Model (IPM). Please provide justification for the use of a different model as well as whether it is open source (C–7).

VIII. Statutory and E.O. Reviews

Additional information about these statutes and E.O.s can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. E.O. 12866: Regulatory Planning and Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in the course of E.O. 12866 review have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, *Economic Impact Analysis for the Supplemental Proposed Rule, Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111*, is available in the docket.

The EPA presents the estimated present value (PV) and equivalent annualized value (EAV) of the projected cost savings for the power sector of this proposed repeal for the years 2026 to 2047 in 2024 dollars, discounted to 2025. In addition, the EPA presents the results for specific snapshot years, consistent with historical practice. These snapshot years are 2030, 2035, 2040, and 2045. The benefit-cost analysis, which is in the economic impact analysis (EIA) for this rulemaking, is available in the docket. This information is provided for information purposes only and does not impact the justification for this action.

The analysis considers the power industry’s compliance costs as the change in electric power generation costs due to this proposed repeal. Table 8 presents the estimates of compliance cost savings of this proposed rule for the power sector.

TABLE 8—PRESENT VALUE (PV) AND EQUIVALENT ANNUALIZED VALUE (EAV) OF THE COMPLIANCE COST SAVINGS
[Million 2024\$, discounted to 2025]

3% Discount rate		7% Discount rate	
PV	EAV	PV	EAV
370	23	230	21

The compliance cost savings in Table 8 are the estimated change in expenditures by the power sector due to this proposed repeal, which include changes in taxes paid and credits received. The analysis also considers the real resource cost savings due to this proposed repeal, which are the change in the total avoided cost of resources

used by the power sector, which includes capital, labor, fuel, and material inputs, that would have been used for compliance.
In contrast to the compliance cost savings in Table 8, the real resource cost savings do not include transfers, such as taxes paid or tax credits, that shift who is paying for the inputs for compliance

but do not reduce the social cost. These tax credits would have reduced costs from the perspective of the power sector but would have been a cost from a societal perspective and will now be avoided as a result of this proposed action. Over the 2026 to 2047 period, the PV of the estimated real resource cost savings is \$270 million using a

three percent discount rate and \$170 million using a seven percent discount rate discounted to 2025. Over this same timeframe, the EAV of the estimated real resource cost is \$17 million using a three percent discount rate, and \$15 million using a seven percent discount rate.

B. E.O. 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an E.O. 14192 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action. This analysis, *Economic Impact Analysis for the Supplemental Proposed Rule, Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111*, is available in the docket.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed action have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The EPA proposes to amend the information collection requests for 40 CFR part 60, subparts TTTT and TTTTa. Details on the amendments for these subparts are described below.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than October 19, 2026.

1. 40 CFR part 60, subpart TTTT

The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2465.06. You can find a copy of the ICR

in the docket for this rule, and it is briefly summarized here.

Respondents/affected entities:

Owners and operators of fossil fuel-fired EGUs.

Respondent's obligation to respond:

No longer mandatory.

Estimated number of respondents: 92.

Frequency of response: No response required.

Total estimated burden: 3,130 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$376,000 (per year), includes \$0 annualized capital or operation & maintenance costs.

2. 40 CFR part 60, subpart TTTTa

The ICR document that the EPA prepared has been assigned EPA ICR number 2771.04. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

Respondents/affected entities:

Owners and operators of fossil fuel-fired EGUs.

Respondent's obligation to respond:

No longer mandatory.

Estimated number of respondents: 2.

Frequency of response: No response required.

Total estimated burden reduction: 110 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost savings: \$12,000 (per year), includes \$0 annualized capital or operation & maintenance costs.

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 Agency is certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities because this action relieves regulatory burden on the small entities subject to the rule. As outlined in section 2.3.4 of the EIA for this rulemaking, the EPA identified 25 potentially affected small entities that own combustion turbine units considered in the analysis. Under the repeal, the EPA projected compliance cost savings of \$6.8 million for these small entities in 2035 (this is the year with the highest projected cost savings). There are no years that are estimated to have costs on small entities for this proposed action. The EPA expects that this deregulatory action will relieve the regulatory burden for facilities that, absent this repeal, would be affected by the provisions from the 2015 NSPS and the 2024 CPS. This action will not have a significant economic impact on a substantial number of small entities under the RFA.

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 of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

F. E.O. 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. E.O. 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in E.O. 13175. It will not have substantial direct effects on Tribal governments, 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 E.O. 13175. Thus, E.O. 13175 does not apply to this action.

H. E.O. 13045: Protection of Children From Environmental Health Risks and Safety Risks

E.O. 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 E.O. 13045 because it is not a significant regulatory action under section 3(f)(1) of E.O. 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, the EPA's Policy on Children's Health applies to this action.²³¹

This proposed action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other

²³¹ U.S. Environmental Protection Agency. (2021). 2021 Policy on Children's Health: <https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf>.

mechanisms in the CAA. This proposed action does not affect applicable local, State, or Federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

I. E.O. 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy over the analysis period (2026–2047) based on the results presented in the EIA accompanying this rulemaking.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This proposed rulemaking does not involve technical standards; however,

the proposed removal of 40 CFR part 60, subparts TTTT and TTTTa involve removing the corresponding measurement and compliance procedures, some of which also involve removing existing references to voluntary consensus standards and other technical standards. This proposed action does not include any new requirements or new references to technical standards.

Lee Zeldin,

Administrator.

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